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ABSTRACT

This report, based on a study of delinquency cases in the Bronx and Brooklyn family courts, examines the juverile justice system in New York City. The study considered the following questions: (1) To what extent were problems being experienced by the court at various stages in the processing of cases? and (2) To what underlying forces might the problems be attributed? Following interviews with lawyers, corporation council members, probation officers, district attorneys, and judges, a tracking study of 500 juvenile offenders was conducted. Typically, the youngsters selected came from low income, single parent families. Findings include a review of print media accounts of the alleged breakdown of decision making in New York's family courts, and the outcomes of cases. Also examined are: (1) the extent to which the delay and incidence of dismissals can be explained on the basis of inefficient bureaucratic procedure and environmental demands; (2) the question of whether the court's malfunction can be traced to the advantaged position of the Legal Aid Society's defense attorney relative to that of the corporation counsel or prosecuting attorney; and (3) the issue of relative advantage in the family court adversarial relationship with regard to the differential success of public defenders and prosecutors in delinquency proceedings. Included as an appendix is a detailed discussion of juvenile justice reform in New York State. (JCD)

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JUVENILE INJUSTICE: DILEMMAS OF THE FAMILY COURT SYSTEM

by

Michael Fabricant

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PREFACE

The research reported here reflects a longstanding concern of the Community Service Society with juvenile justice in New York City. The study was initiated in a climate of widespread public criticism of the family court. Through the study C.S.S. hoped to provide the interested public with a thorough and objective account of the court's operation.

Within C.S.S. the project represents a collaborative effort on the part of policy and research units. The C.S.S. Committee on Criminal and Juvenile Justice played an important role in defining study objectives. Responsibility for execution of the study was lodged within the Institute for Social Welfare Research. Michael Fabricant was the principal figure in the study throughout. He conceived the project, developed the basic research strategy, supervised the data collection, analyzed the data, and wrote the basic research report.

The complexity of the subject and the study process itself dictated an eclectic approach to the research. Much of the study was guided by a sociological perspective. A legal analysis was added, however, to establish fully the context in which the court operates. At the outset the data collection methods used were qualitative, i.e., observation and semi-structured interviews. In the latter stages highly structured data collection and quantitative data analysis were employed. The use of such diverse analytic strategies places the study outside of any one of the conventional scholarly traditions concerned with juvenile justice. The eclectic approach,

however, makes this an unusually rich source of information about the court.

Presented here is an edited and abridged version of a final report prepared by Michael Fabricant. The current report emphasizes findings of the empirical research. Almost entirely excluded in the current version is extensive material on the history of juvenile justice in the United States. Mary Zander assisted me in condensing Dr. Fabricant's manuscript.

The study illuminates the problems of the court. At the outset we hoped that the study findings would point clearly to ways in which the effectiveness of the juvenile justice system might be enhanced. Unfortunately, we do not have a basis for drawing conclusions. In part the study findings support recommendations of earlier inquiries -- recommendations which it has been difficult for the court to implement. More importantly, however, the findings call attention to a series of dilemmas with which the court is entangled. Reforms addressed to one set of problems are likely to add to other difficulties experienced by the court. It is our hope that the report will stimulate widespread, thoughtful discussion of the mission of the court, the youngsters, families and communities it serves, and the strengths and limitations of the court's operations. Perhaps from such deliberations new and more effective methods will emerge to reconcile the needs to protect public safety, to assure youngsters of their legal rights, and to enhance the welfare of troubled youth.

Francis G. Caro

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Judge Williams provided us with access to the family court. He was particularly helpful in smoothing over some difficult encounters with court personnel during the first stages of the investigation. Irving Cohen and many other administrators and staff members of the probation department provided us with critical information and support. The administration and staff of the courts, Legal Aid Society and Corporation Counsel were also most cooperative.

The C.S.S. Committee on Criminal and Juvenile Justice offered valuable advice and encouragement throughout. Thomas Chittendon was particularly helpful in eliciting the cooperation of court personnel and in reviewing an earlier version of the manuscript.

Bertram M. Beck provided essential on going support. He was a constant source of support in our efforts to finance the study and contributed valuable critical insights on substantive matters.

In the early stages Carol Whalen and Judy Mahler played a helpful

role in defining study objectives and in generating organizational interest in the project. Adelin Cobden and Edward Pabon offered useful suggestions on the basis of a review of a draft of the report. Frank Caro's contribution has also been invaluable. His criticism and insight contributed to refinements of the analysis. Sue Todd, Robert Green, Doreen Seligson, Judy Feinman, Cora Yamomoto, Elissa Halpern, and Robin Seif collected the data for the study. They also helped to create and sustain the cooperation of court personnel. Electra Woods maintained the data files for the study and did much of the coding. Her thoroughness enabled us to manage a highly complex data set effectively. Edith Oxley and Helen Larmore contributed valuable office support during the data collection period. John Baer and Eli Baker were highly proficient in handling data processing responsibilities. Mary Zander assisted Frank Caro in editing the present report. Jayne Fahey did the manuscript typing quickly, accurately, and patiently. Maren Grossman and Helen McLaren assisted with production of the report. Milas Nall and his staff were most helpful in addressing the project's duplicating and printing requirements.

CHAPTER I

INTRODUCTION

Repeatedly through the 1970's the New York City Family Court was singled out as a target of public criticism. The incidence of serious juvenile crime was reported to be at an unusually high level and increasing. The family court was implicated because many serious delinquent acts were being committed by youngsters with prior involvement with the court. According to accounts appearing in the print media, the court's inability to deal effectively with delinquent young persons left them at large in the community and free to engage in renewed criminal activity.

Dissatisfaction with the court's performance in controlling youth crime led the legislature in 1977 to pass a bill calling for special handling of some of the most serious delinquent offenses, labeled as "designated felonies." Stronger prosecutorial efforts and judicial priority were mandated for these cases. In 1979 the legislation was strengthened by expanding the categories of offenses considered serious, removing these cases from the family court and placing them in the criminal court. Further, the penalties resulting from a conviction in the criminal court were to be significantly more severe than the placement dispositions made by the family court.

The harsh public criticism of the family court and the legislature's strong response to the criticism pointed to a need for a careful inquiry

into the functioning of the court. The present study was initiated as a broad, even-handed examination of what was happening in the court. Answers were to be sought to two basic questions:

- To what extent were problems being experienced by the court at various stages in the processing of cases?
- To what underlying forces might the problems identified be attributed?

Methods

The study is concerned with the Family Courts in two boroughs: Brooklyn and Bronx. Resource limitations dictated that the study be limited to two boroughs. Brooklyn and Bronx were selected because they are the most extensively involved in juvenile justice issues. Together they account for approximately two-thirds of the delinquency cases processed in the city. The two courts are large enough to be important in their own right. They are also presumed to be reflective of problems experienced in the courts in the other boroughs.

The study involved both qualitative and quantitative dimensions. Initially study staff conducted extensive, open-ended interviews with court personnel to obtain an insiders view of court operations. Deliberate efforts were made to interview persons with diverse responsibilities to assure that all pertinent points of view would be reflected. All of the lawyers, corporation council staff members, probation officers and most district attorneys and most judges in both courts were interviewed. In this phase of the research a total of approcimately 125 interviews was conducted. Respondents were encouraged to give their accounts of problems in the court and their

interpretations of causes. Interviewers sought to record these accounts faithfully. Through careful analysis of interview data, a number of major substantive themes were identified. The accounts of varied personnel were compared so that emerging themes could be seen in the complete court context. Qualitative data are presented here to reflect the major themes which emerged from the interviews. Extensive use if made of reconstructed statements of respondents to present the data as concretely as possible.

In a second phase of the study experiences of young persons with the family court were tracked. One aspect of the tracking study involved 500 youngsters brought to the family courts in Brooklyn and the Bronx on delinquency and status offense charges. The experiences of these youngsters with the courts were followed for an 18 month period. Only youngsters appearing in the court for the first time were included in this sample. The study was concerned not only with the charges which brought the youngsters to the court initially but subsequent charges occurring during the period. A second aspect of the tracking study involved 120 designated felony cases drawn from the Brooklyn and Bronx Family Courts. Included were youngsters charged with the following offenses: murder, first degree; murder, second degree; kidnapping, first degree; arson, first degree; assault, first degree; manslaughter, first degree; rape first degree; sodomy, first degree; and robbery, first degree. The designated felony sample was monitored only for the duration of the court's handling of those

charges. For both samples all pertinent cases were accepted until desired sample sizes were achieved. Data for the tracking research were collected from 1977 to 1979.

A major concern of the research was delay in the processing of cases. Accordingly data were sought on each court appearance. Information was obtained on the timing and outcome of each appearance. When cases were adjourned, dismissed, or withdrawn, reasons were sought. In addition, information was obtained on the youngsters demographic characteristics, the charges, and the form of legal representation.

A variety of data collection techniques were employed. Some data were available through court records. To obtain information on reasons for some court actions, it was necessary for research staff to attend court proceedings. In some cases court personnel provided needed information through interviews.

Historical Context

The current study was conducted during a period of important change in public response to juvenile crime. Changes were taking place affecting not only the family court but the entire juvenile justice system. During the first half of the 20th century, the Family Court Movement was committed philosophically to serve the interests of the youngster. The benevolence, however, was accompanied by coercion. The critics argued that youthful offenders were vulnerable to the highly discretionary and often arbitrary decision making of the court. Some went so far as to argue that

the judiciary was less concerned with serving the best interests of the child than in reducing its mounting caseload and imposing its particular professional and personal biases upon the defendant. Finally, it was felt likely that the State's intention and capacity to help troubled youth was sharply undercut by its dispositional resources, namely residential programs which at best were ineffectual and at worst contributed to the formation of a more hard-core delinquent personality.

A segment of the legal community, therefore, argued that the State had violated its historic commitment to troubled youth. The promised rehabilitative services were not delivered to such youth although they had surrendered certain fundamental due process rights for the privilege of being treated differently from adults. The State, in effect, had bartered away the child's right to legal safeguards which had historically insulated the individual from arbitrary state intervention -- a sacrifice predicated upon the illusory promise that the judiciary's response to the child's situation would be shaped by the impulse to help or treat rather than "control" troubled youth.

The wide acceptance of this view had certain explicit consequences for the juvenile or family court. The court could no longer function on the presumption that it might unilaterally determine what was in the best interests of the child. Instead, it had to satisfy certain procedural guidelines prior to diagnosing or formulating a response to the child's condition. A number of U.S. Supreme Court decisions described general procedural guidelines which juvenile courts throughout the nation were

expected to follow.

The "Gault decision" of 1967 represented a substantial reformulation of the supreme court's thinking on matters that pertained to juvenile justice. The court determined that the State of Arizona had violated a number of Gerald Gault's fundamental constitutional rights because of the special status it accorded juveniles. It concluded that such abuses could be minimized by incorporating certain due process standards into the juvenile hearing. The supreme court indicated that the alleged delinquent had a right to notice of the charges, counsel, confrontation, cross-examination, a transcript of the proceedings, and the privilege against self-incrimination. It is generally agreed, however, that the provision which assured the juvenile a right to counsel offered the greatest hope for immediately reducing flagrant violations of due process and transforming the character of juvenile justice decision making. Defense counsel was perceived as being a primary enforcer and implementer of reform. The prevailing presumption during this period was that the function of counsel and evolution of the juvenile court would vary greatly by state and locality, depending upon both differential levels of funding and the defense counsel's capacity and commitment to engage the state as an adversary. The juvenile justice literature suggests that very few localities provided the funding needed to assure the family court's predominantly low income clientele of strong legal representation. A number of significant exceptions to this general pattern, however, have been cited. The New York City experience is most frequently mentioned as an instance where counsel has had a profound impact

upon both the tone and nature of the court's deliberations. The New York City Family Court represents perhaps the most fully implemented example of a "legal rights" or "legalist" definition of juvenile justice.

The importance of fully understanding the implications and consequences of New York City's experience with this model of juvenile justice is underscored by recent events. A plan for reformulating juvenile justice decision making [1] has been incorporated into the American Bar Association's recently completed report, which represents a comprehensive and detailed exposition of the legalist's interpretation of juvenile justice. A number of states are currently in the process of developing and implementing bills which borrow heavily from this document. If this initial response to the American Bar Association's report is any indication, a significantly greater number of states are more fully prepared to embrace the legalist model of juvenile justice today than they were in the 1960's or 1970's. Consequently, the vanguard position of the New York City Family Court is particularly pertinent to the present and future circumstances of juvenile justice in America.

Youngsters Seen by the Court

Information on the backgrounds of youngsters whose cases are brought before the family court contributes to a full understanding of the context in which the court operates. The tracking study provides a basis for a statistical profile on the young persons seen by the court. Data were collected on family income, major income sources, living arrangements,

number of children in households, ethnicity, and sex.

Characteristically the youngsters come from low income backgrounds (Table 1-1). Family income data for New York City in 1973 are useful in placing the sample data in a larger context. (The comparative figures somewhat understate poverty among family court clients because the city wide data are less recent than the family court data. Because the figures span an inflationary period, the city wide data represent greater purchasing power than the data reported for family court clients.) Family incomes for those seen in the court were only slightly more likely to be below $5,000 than were incomes for families city wide in 1973. Family court clients, however, were much more likely to have incomes below $10,000. Among delinquency and PINS cases the percentages of families with incomes below $10,000 were 70 and 76% respectively. City wide only 46% had incomes below $10,000. The data on primary income sources add to the poverty configuration (Table 1-2). In the majority of cases the youngsters came from families whose primary source of income was a public income maintenance program. Public assistance was the single most common major income source in 45% of the delinquency cases and 49% of the PINS cases. City wide, in contrast, only 27% of the children in New York City in 1978 were supported primarily through the Aid for Families with Dependent Children Program (Lash, 1980).

Approximately two-thirds of the overall sample were living in a one-parent family. City wide in 1974 approximately 25% of those under 18 years of age lived in one parent households. Youngsters living with a lone-parent,

TABLE 1-1

FAMILY INCOME AND PETITION TYPE,
BROOKLYN AND BRONX COMBINED
(PERCENT DISTRIBUTION)

	PETITION		
FAMILY INCOME	DELINQUENCY	PINS	TOTAL INCOME ALL FAMILIES NEW YORK CITY, 1973*
Under $5,000	20.6	27.5	19.1
5,000-10,000	49.4	48.7	26.6
10,000-15,000	22.8	14.1	22.3
Over 15,000	7.2	9.7	32.0
Total %	100.0	100.0	100.0
N	320	269	

*Bondarin (1976). New School for Social Research. Center for New York City Affairs. "New York City's Population - 1974: Socioeconomic Characteristics from the Current Population Survey" by Arlv Bondarin. New York, New York: New School, April, 1976.

TABLE 1-2

PRIMARY FAMILY INCOME SOURCE AND PETITION TYPE,
BROOKLYN AND BRONX COMBINED
(PERCENTAGE DISTRIBUTION)

	PETITION	
INCOME SOURCE	DELINQUENCY	PINS
Welfare	45.3	49.1
Social Security	7.8	5.1
Other Public Assistance	1.2	3.6
Employment	45.0	39.0
Absent Father	0.6	3.2
Total %	99.9	100.0
N	322	277

TABLE 1-3

LIVING ARRANGEMENTS AND PETITION TYPE,
BROOKLYN AND BRONX COMBINED
(PERCENTAGE DISTRIBUTION)

LIVING ARRANGEMENT	PETITION		PERSONS UNDER 18 YEARS OF AGE NEW YORK CITY, 1974*
	DELINQUENCY	PINS	
Both parents	30.6	27.5	69.0
One parent	65.2	67.2	26.7
Other relatives	3.7	4.2	2.2
Foster home	0.6	0.3	2.1
Other	0.0	0.7	
Total %	100.1	99.9	100.0
N	353	287	

*Bondarin (1976). New School for Social Research. Center for New York City Affairs. "New York City's Population - 1974: Socioeconomic Characteristics from the Current Population Survey" by Arly Bondarin. New York, New York: New School, April, 1976.

therefore, are heavily over-represented in the caseload of the family court. The lone parents, of course, tend to be mothers. The low-income pattern, extensive dependence on public assistance, and over-representation of one parent families are all part of an inter-related poverty configuration.

Not only do the youngsters come from low-income, lone-parent families, but they come from households with relatively large numbers of children (Table 1-4). Over half of those seen on delinquency charges and over 40% seen on PINS charges came from households with four or more children. In contrast, only 11% of all families in New York City with children had four or more in their households.

The minorities also are over-represented in the family court caseload (Table 1-5). Less than 10% of those charged in the two courts were Anglos. The degree of over-representation of minorities in the caseload is suggested by the fact that in 1980 53% of the total population of the two boroughs was White ([Source - see Table 1-5]). Blacks were particularly over-represented among those appearing on delinquency charges, making up 56% of the cases. Hispanics and Blacks were nearly equally represented among those seen on PINS charges.

The population seen on delinquency charges was predominantly male -- 86%. (Table 1-6). The PINS caseload, however, was nearly equally divided between males and females.

Overall the youngsters seen by the court in the Bronx and Brooklyn

TABLE 1-4

NUMBER OF CHILDREN IN HOUSEHOLD AND PETITION TYPE,
BROOKLYN AND BRONX COMBINED
(PERCENTAGE DISTRIBUTION)

CHILDREN IN HOUSEHOLD	PETITION		FAMILIES WITH CHILDREN UNDER 18, NEW YORK CITY, 1976*
	DELINQUENCY	PINS	
1	7.2	13.3	46.3
2	20.7	17.6	27.8
3	17.3	25.9	14.5
4	22.5	13.7	11.4
5	19.0	15.8	
6	8.4	6.1	
7+	4.9	7.6	
Total %	100.0	100.0	
N	347	278	

*Lash et al (1980). Foundation for Child Development. State of the Child: N.Y.C. II. By Trude W. Lash, Heidi Sigal and Deanna Dudzinski with the assistance of Candace Frede and Freda Weiner. New York, New York: Foundation for Child Development, June, 1980.

TABLE 1-5

ETHNICITY AND PETITION TYPE, BROOKLYN AND BRONX COMBINED (PERCENTAGE DISTRIBUTION)

ETHNICITY	PETITION		ALL PERSONS, BROOKLYN AND BRONX, 1980*
	DELINQUENCY	PINS	
Anglo	9.3	9.8	53.0
Black	56.2	43.7	47.0
Hispanic	34.2	46.5	
Other	0.3	0.0	
Total %	100.0	100.0	
N	333	140	

*[U.S. Department of Commerce, New York City 1980 Advance Census Count] U.S. Bureau of the Census. 1980 Census of Population and Housing: New York Advance Reports - New York. Washington: GPO, March, 1981.

TABLE 1-6

SEX AND PETITION TYPE, BROOKLYN
AND BRONX COMBINED
(PERCENTAGE DISTRIBUTION)

	PETITION	
SEX	DELINQUENCY	PINS
Male	86.5	49.8
Female	13.5	50.2
Total %	100.0	100.0
N	371	295

are highly similar in their characteristics. The relatively few observable differences may be noted briefly. The Brooklyn population is poorer than that in the Bronx. Among those seen on delinquency charges in Brooklyn, 32% came from families with incomes below $5,000. In the Bronx, 13% of those charged with delinquency came from families with incomes below $5,000. Among those seen on PINS petitions, there was also a greater concentration in Brooklyn of cases of youngsters whose families had incomes below $5,000. In Brooklyn youngsters seen on PINS charges tended to come from larger families than those seen in the Bronx. In Brooklyn 38% came from households with five or more children while in the Bronx only 21% came from households with that many children. The courts are rather similar in the ethnic characteristics of PINS cases but some differences in ethnicity of delinquency cases are evident. In the Bronx 40% of those seen on delinquency charges were Hispanic compared to 25% in Brooklyn. Blacks accounted for 51 and 65% of the delinquency cases in Brooklyn and the Bronx respectively.

Clearly the youngsters appearing in the court tend to come from severely disadvantaged families. The pattern is fully consistent with the sociological research tradition which elaborates the relationship between socioeconomic status and formal encounters with the juvenile justice system. Perhaps more importantly for the current analysis the data show that the youngsters come from relatively dependent, powerless families. Their parents, in general, cannot be expected to have strong financial resources, political leverage, or personal skills that can help them in negotiating

their trouble with the authorities. As a whole the youngsters and their families do not represent a powerful constituency to which public authorities must be responsive. On an individual basis, defendents and their parents are characteristically dependent on publicly-funded assigned counsel for whatever help they can obtain in negotiating their encounters with the juvenile justice system.

Organization of the Report

Findings of the study are presented in the chapters which follow. Chapter II begins with a review of print media accounts of the alleged breakdown of decision making in New York's Family Courts. The chapter includes findings from the tracking study on the duration of court proceedings and on the outcome of cases.

The third and fourth chapters explore the extent to which the delay and incidence of dismissals associated with court decision making can be explained on the basis of inefficient bureaucratic procedure and environmental demands. The fourth chapter focusses on a factor which has previously been a very minor theme in the literature. It inquires whether the court's malfunction can be traced to the particularly advantaged position of the Legal Aid Society's defense attorney, relative to that of the corporation counsel or prosecuting attorney. This unbalanced adversarial relationship extended to all delinquency cases prior to 1977.

The fifth chapter delves more deeply into the issue of relative advantage in the family court adversarial relationship. The tracking study

provides data base for the chapter. This chapter examines and draws conclusions concerning the differential success of public defenders and prosecutors in delinquency proceedings. Finally, there is an explanation of the consequences and implications of the fact that a prosecuting or State attorney is generally unavailable to represent the parent's position in a PINS case.

Included as an appendix is a detailed discussion of juvenile justice reform in New York State. The legislative provisions and case law decisions which served to increase the due process emphasis in family court in the State are reviewed. The appendix outlines the legal context in which the court operates.

CHAPTER II

THE BREAKDOWN OF DECISION MAKING IN NEW YORK CITY'S FAMILY COURTS

Despite New York's progressive tradition in the area of juvenile justice, various reports during the 1970's suggested that the delinquency problem was not abating but rather developing rapidly into a crisis of epic proportions. Newspaper headlines announced the growing numbers and kinds of offenses being committed by delinquent youth. Government and private agencies reported that the courts were increasingly unable to process the substantial numbers of youths being charged with delinquent offenses. The human costs of delinquent acts frequently were presented by the media in a dramatic and graphic manner.

Such reports heightened the public's anxiety about a problem that appeared increasingly uncontrollable. They also contributed to a growing demand that public officials take swift and immediate action to rectify the situation. This clamor was particularly acute between the years 1975-77, playing a central role in shaping the mayoralty election of 1977. Delinquency was one of the most hotly debated issues during the campaign.[1] It served to illuminate differences between the candidates and thus may have had a significant impact on the outcome of the election. This climate of concern associated with delinquency also had a pronounced effect upon the manner in which the judiciary intervened with certain classes of offenders. The chapter will begin with accounts from the print media which

charge that deficiencies in the family court may be responsible for mounting rates of juvenile crime. In a second section data from the tracking study which shed light on the alleged breakdown in the court's decision making are reported.

Data Base

Data for the first portion of this chapter were drawn from an extensive review of newspapers and popular magazine articles concerned with delinquency in New York City between 1975 and 1978. The articles reviewed tend to draw on three sources: illustrative cases, official statistics, and various study reports. The journalistic accounts are presented here to indicate how problems were perceived. The articles are useful in showing the extent to which delinquency was popularly seen to be a problem. They are helpful also in showing how the performance of the family court was seen to be linked to the delinquency problem.

The validity of the journalistic accounts is another matter. Carefully selected, vivid case examples provide a limited basis for generalizations. The validity problems associated with official data on crime and delinquency are so well known that they need not be repeated here. Presumably the data are accurately cited but are likely to be carefully selected to justify a dramatic conclusion. All of the studies cited were relatively modest inquiries. They provided journalists with a useful but incomplete picture of the functioning of the juvenile justice system. The review presented here of the print media's account of delinquency

and juvenile justice, therefore, should be regarded largely as an indication of public concern. The assertions made about serious deficiencies in the functioning of the family court are suggestive of questions to be addressed through more systematic inquiries.

Crime Upsurge

In general the media presented data and reports which pointed to a dramatic upsurge in delinquent and adult crime. The following passages highlight the media's coverage of this issue.

> Arrest figures show that violent crimes by juveniles in New York State have increased precipitously in the past five years according to a report by a state advisory panel on delinquency programs. . .Among its findings arrests of juveniles (under 16) for murder increased by 289%. . .Arrests of youths 16-18 for murder increased 100%. . .arrests of juveniles for forcible rape increased by 225%. . .; arrests of youths 16-18 for rape increased by 201%. In other violent crime categories: arrests of juveniles for robbery increased by 95%. . .; arrests of 16-18 year olds for robbery increased by 75%. . . There were also increases in non-violent crime categories but the report noted that figures indicate that violent crimes increased even more precipitantly than non-violent crime. (November 19, 1975, New York Post)

> Young Criminals
> The recent rash of muggings, robberies and violence committed by youths against old and infirm victims is a reflection of the brutalization of urban society. (November 13, 1976, New York Times, Editorial)

> In 1975, an unexpected and dazzling increase in the amount of violent juvenile crime had swamped the court in New York City. Arrests of kids under sixteen had risen from 3,424 in 1950 to 26,153 in 1975. (June 1975, New York Magazine)

The most widely read and accepted data indicated that serious delinquent offenses had proliferated dramatically between 1973 and 75. The media's account of a juvenile crime wave was undergirded by statistics which suggested that all types of crime for both adults and juveniles were on the rise.

Reasons for Upsurge

The explanations for this phenomenon were varied. Some saw it as a consequence of the deepening recession. One commentator compared the poor economic situations of various minority groups to those which were characteristic of the Depression.[2] Others argued that the problems of minority youth were a reflection of the long term fiscal and growth problems confronting urban areas. The problem was seen as especially intractable given the deteriorating condition of fundamental institutions in these urban areas. Because the capacity of cities to expand their economic base, was limited, so were job opportunities available to juveniles. Still others attributed this alleged shift in increase in delinquent behavior to the inability of the nuclear family to exercise its traditional control over juvenile behavior, the decline of organized religion, the absence of community, or television's penchant for violent programming. Clearly, there was little agreement among specialists in the field on which factor is primarily responsible for the presumed increase in delinquent behavior. Many shared the media's recording of their variant interpretations of delin-

quent behavior. However, the perspective and the consequent media attention was only pertinent if the presumed increased anti-social behavior on the part of troubled youth was accurate.

Urgent Viewpoint of Media

Delinquent behavior was represented by the media as an immediate threat to the community. The vulnerability of the elderly was emphasized. Human interest stories graphically illustrated the personal costs associated with such crimes. Individual accounts of stress and pain were bolstered by the testimony of public officials suggesting that these stories were not idiosyncratic but represented a significant and increasingly uncontrollable social problem.

> Two hard eyed detectives. . .bent over Mrs. ____ in a lobby of the Bronx Family Court. They tried to reassure the distraught woman that the fifteen-year-old youth who had robbed her at knifepoint would not try to retaliate. . .Earlier she had sat twisting her green and white wool stocking cap saying to no one in particular: "Oh, please. I'm trying to move out of that neighborhood. . . He lives in my neighborhood," she said of the youth who had demanded $200 from her at knifepoint . . .He'll come back and get me." (November 13, 1976, New York Times)

> Old people throughout the city, but particularly in its poorer sections, live in constant terror. To cowardly thugs they are not human beings in need of respect and assistance but targets to be

> harassed, robbed, injured and even killed usually for the price of a few dollars. Symbolic of such urban decadence are two boys aged twelve and fourteen who knocked down a frail 103 year old woman on her way home from the supermarket in the Bedford-Stuyvesant section of Brooklyn stealing from her a bag of groceries worth less than $2. (November 13, 1976, New York Times)

> "They are not human, they are not human!" Mrs. ____ said as she sat on the edge of he bed in the foyer. "About a year and a half ago, two black teenagers came up from behind me on the concourse and pushed me down on the sidewalk. Then they took my pocketbook." (December 12, 1976, New York Times)

The Family Court

The press consistently portrayed the court's operation as ineffective, counterproductive, and as failing to stem the tide of increased delinquency and familial disintegration. It was also implied that the court had aggravated the conditions which produced this social breakdown.

> Officer Croce said he thought most of the attacks on the elderly were committed by "young people who have no moral standards whatsoever. They know if they're under sixteen they'll go to the family court and be right out on the streets again." (November 12, 1976, New York Times)

> Just before his fourteenth birthday, Charles and two other boys were arrested for robbing a man. . . in the lobby of an apartment building. The probation officer decided the case should go to a judge and within a few hours Charles was arraigned. Then, as usual the boy was sent home in his mother's custody. In nearly every way the impact of the system on Charles appears to have been negative. . .the perception of the youth they say is that he is beating the system and feels encouraged to continue. (March 21, 1976, New York Times)

> Recent events have caused another public outcry in reference to the family court. This time we are focusing upon the violent juveniles and their most vulnerable target: the elderly. . .the juvenile justice system is not operating effectively at all; either to protect all of us or to provide the necessary continuum of services and resources to those children, families, victims and victimizers alike, who are most in need. The real problem (in family court) is that nothing happens. (George Laurance, testimony on youth violence, presented before the New York City Youth Board, December 8, 1976)

Perfunctory Hearings

The media compared the court process to a sieve since it did not adjudicate the overwhelming majority of processed cases past intake. Instead juveniles were dismissed by the judge and returned home. The press indicated that such a substantial number of dismissals was inappropriate and illustrated the court's dysfunction. These journalists further noted that the perfunctory and brief nature of hearings indicated that the court's handling of various cases was not equal to the seriousness of the proceedings.

> I have on many days heard more than 125 cases with an average of less than three minutes per case. Certainly a judge needs more time. . .And certainly, those who appear before the court, and the entire public, are entitled to better than this. (May 6, 1976, New York Times)

> Only 7% of the PINS and 6% of the juvenile delinquency hearings observed were fifteen minutes or more. All of the PINS cases were heard in less than thirty minutes and only 3% of the juvenile delinquency cases were more than thirty minutes. (March, 1979, Fund for Modern Courts, Final Report)

> Our recent study dealt with all the petitions for delinquency and PINS during four separage months in 1974 and 1975. Of 582 petitions drawn on delinquency charges, there were only 98 convictions. It must be understood that petitions are drawn after an interview with an intake probation officer. These officers attempt to divert from the court all youngsters who are not in need of court services. In the period studied over 74% of the delinquency cases were diverted this way. (George Laurance, testimony on youth violence before the New York Youth Board, December 8, 1976)

Delay

Hearings were said to be so brief as to be of little value to the court process or the juvenile. Nevertheless it was reported that many cases were repeatedly adjourned and rescheduled. Such delays often took months and surely heightened the frustration and sense of futility the principal parties must have felt towards the court process. The court experience frequently appeared to consist only of an endless series of brief appearances. Media coverage showed the ideal of swift justice as illusory. Instead, the complainant was victimized by a negligent bureaucracy faithfully observing its various procedures but failing in its responsibility to justly exercise its authority.

> 2,154 arrests (for the more violent categories of delinquency) or 87.2% of those before the court were disposed of within one year: of these 759 or 30.7% of the total were concluded within three months; 642, or 26% within four to six months; 435, or 17.6% in seven to nine months; 298 or 12% dragged on for between thirteen and twenty-two months and the length of time could not be determined for twenty cases. (April, 1976, Office of Children Services report, "Juvenile Violence")

> A writer says she sought the prosecution of two teenage purse snatchers but was talked out of it by an official in the family court. (March 2, 1976, New York Times)
>
> A mother of a boy who was beaten and robbed by a gang of youths in Central Park says officials suggested she drop the charges. She refused and appeared in court on six or seven occasions which stretched over a year. . .(March 2, 1976, New York Times)

Violent Offenders

A particularly disturbing aspect of the family court was that it did not appear to differentiate between more violent acts and lesser offenses. Various reports indicated that the delinquent accused of more serious acts was as likely as the less serious offender to have his petition dismissed. Further, each type of case was equally susceptible to the brief court appearances and long delays that invariably resulted in dismissals. The press and public were most interested in regulating the violent offender. The court seemed not to share this view.

> There is a noticable funneling aspect of the juvenile justice system. . .The proportion of juveniles charged with violent crimes who are diverted at court intake is approximately the same as the proportion of juveniles charged with less serious crimes who are diverted. An Office of Child Services study in New York City shows that juveniles charged with eleven categories of violent crimes were diverted at a rate of 53.5%. Office of Court Administration data shows that 67.1% of New York City's petitions for the seven serious index offenses. . .are dismissed or withdrawn. A study by the Vera Institute of Justice suggests that the rates are about the same as those for the entire delinquent population. (January 5, 1975, Cahill Report, "Violent Delinquents")

> The study (attribute) chose a selected sample of 4,587 youngsters under sixteen who had been arrested in connection with violent street crimes such as murder, assault, armed robbery and rape. Tracing what happened to these 4,587 youngsters after their arrests. . .was revealing. . .2,165 never even got to court. Their cases were adjusted at Intake. Of the rest who did go through the family court fact-finding process only 336 affected an official response by the court. (June, 1977, New York Magazine)

Recidivism

Another revealing indicator of the alleged futility characteristic of family court decision making is the substantial number of youngsters who return to the court on new charges -- youngsters whose prior records frequently suggest serious and consistent threats to the community. Many articles indicated that a relatively small number of youngsters with extensive prior records were largely responsible for the upsurge in delinquent crime. An implicit message of these media reports was that the court's policy of non intervention had exposed these youngsters to a judicial experience which, through both direct and indirect cues, defined the delinquent's behavior as tolerable. Various observers argued that these "revolving door" policies had alerted many youngsters to the immediate rewards and minimal risks attached to youthful misbehavior.

Recidivist behavior, particularly for serious delinquent offenses, was a special interest of the press. The return to court of a youngster on new delinquency or PINS charges meant an opportunity lost or mismanaged by the court. The youth's most recent anti-social act was viewed as unneces-

sary. This point is underscored by the following statements.

> One detective who marked the squalid, burned-out blocks around 114th Street and St. Nicholas Avenue where the youths lived, said, "They were their own crime wave." Family court arrest records indicate that the youths were involved in at least 100 robberies and an unknown number of crimes for which they were never caught. (March 15, 1977, New York Post)

> A Ford Foundation study appears to have a timely ring. . .a relatively small group of repeat offenders among juveniles -- about 4% of arrested juveniles -- is responsible for most violent crime. . . (July 8, 1978, New York Post)

> The study showed that of the 4,957 arrested in connection with 3,639 violent crimes, 624 accounted for 1,443 of the arrests all by themselves. That meant that 12.9% of the kids accounted for 25.5% of the groups' violent crimes. (June, 1977, New York Magazine)

The meaning of this recidivist pattern was graphically explored through specific accounts of serious offenders' experiences with the family court. These stories reaffirmed the findings of various studies, while providing a more readable format for describing the same phenomena. This type of coverage enabled the media to translate prosaic statistical descriptions of recidivism into a more dramatic form. The urgent tone of this format was probably intended to engage, sustain and enlarge the audience interested in delinquent behavior. The style and content of this coverage is illustrated in the following passages.

> On July 19, 1974, George Adorno was released from Goshen. Within four months, according to his own statements there were four murders in which Adorno

> was a witness or killer. . .Six days later (after one of the murders) Adorno was picked up as a material witness in a taxi cab driver's death, having temporarily conned the police and courts that two of his friends had killed the driver. . .Adorno's story about his friends did not ring true and Judge Dembitz ordered that everyone be given a lie detector test. . .Meanwhile George was walking the streets. . .Whatever the motive on October 24, five weeks after the killing. . .George said he took his rifle from Ray, aimed at Mushmouth's head and fired. Mushmouth died instantly. (June 1977, New York Magazine)

> When William Harper was 14 years old the police say, he dropped out of school and began working as a mugger preying on old men and women in the Coney Island section of Brooklyn. . .He was arrested twice for mugging and sent home both times with a warning. Then he was arrested for the sexual abuse of a ten-year-old boy and put on probation. While on probation he was caught mugging another old person. (April 11, 1976, New York Times)

> A seventeen-year-old Queens youth freed in the custody of his parents after allegedly robbing and assaulting an eighty-year-old woman in her Flushing home was charged today with returning to the house and setting it on fire. . .The youth had been arrested October 28 on charges of robbery and assault after allegedly taking $25 from Mrs. Latimer under the threat of burning down her garage. (November 9, 1976, New York Post)

Circular Process

The family court process was described in the media as a revolving door. Delinquent offenders and PINS were transported through a system but not affected by it. Consequently, they were free to return to the streets and continue their criminal careers. This process seemed affected by the prior record of an offender, the seriousness of an offense, or the

circumstances of an act, but rather enabled youngsters with extensive, delinquent histories to avoid adjudication and/or placement. The media therefore, portrayed the court's adjudicatory function as an essentially vacuous or meaningless exercise. The repeated identification and processing of PINS and delinquent youth had no apparent result.

> Brooklyn Family Court Judge Blossom Heller today pointed to an eleven-year-old boy, who had been truant from school for 106 days and during that time was arrested nine times for shoplifting, as a victim of turnstile justice. . ."Children are truant hundreds of days and nobody is doing anything about it." Judge Heller said "These children need help. Unless these cases are disposed of properly, these children will run rampant in the streets. They'll come back here not as truancy cases but as delinquency cases and then they'll graduate to the supreme court and other courts." (March 31, 1977, New York Post)

> Senator Marion. . .called the release of the young man Ronald Timmons, who had a record of sixty-seven appearances including a conviction in the murder of a ninety-two year old man, "An outrageous example of justice gone awry." (October 31, 1976, New York Post)

> There were 99 robberies. In every case a juvenile was arrested and taken to family court. . .In studying these cases, analysts found that. . .some of them had been in court 100 times. "This is a record of total futility," the counsel to the New York State Committee on Crime told a conference of specialists. (April 22, 1976, New York Times)

Dispositional Leniency

These cyclical aspects of the court's decision making were attributed

to the distinctive qualities of its post-adjudicatory or dispositional hearing. A juvenile defendant's future circumstance is determined first by the adjudication and later the disposition or sentence of the court. As noted before, the initial phase of decision making seemed inconsequential since the vast majority of petitions were not sustained. This situation was compounded by the court's policy of routing convicted delinquents back to their communities. Even conviction and dispositional hearing did not alter the court's perceived minimalist approach to justice, since a delinquency adjudication did not assure the public that the defendant would be treated or confined. The most concrete indicator of judicial success or failure during this dispositional period was the incidence of commitment. Low commitment and treatment rates were seen as the court's final and most serious breach of faith -- a lost opportunity for both the public and the delinquent. The examples of the court's dispositional practices and the political response to these are illustrated below:

> He (Mario Biaggi - Congressman) said that many juveniles who commit such crimes against the elderly are out on the streets in very "short order" because "overlenient judges" do not give them the "same punishment as adults". (December 13, 1976, New York Post)

> A spokesman for Lieutenant Governor Krupsak, who was opposing Carey in the Democratic primary, said that she favors adult sentencing procedures in criminal court and determinate sentencing with no parole in juvenile cases. "The juvenile justice system" she said, "has not worked and needs drastic overhaul." (July 7, 1978, New York Post)

> In the majority of both PINS and juvenile delinquency cases, placement of the respondent in the custody of the parent, relative guardian, etc., was the most frequent placement. At the beginning of hearings respondents in the PINS cases observed were almost equally likely to be placed in either the Department of Social Services or in the custody of a parent, relative guardian, etc., without supervision. Respondents in juvenile delinquency cases observed were primarily placed with t he parent, relative guardian, etc., (89%) with an insignificant number (6%) being placed. . .(March 1979, Fund for Modern Courts, Final Report)

> Juvenile Justice found Deficient in New York City
> State study notes only 4% of those seized for violent crimes served time. (May 3, 1976, Headline, New York Times)

PINS Dispositions

Particular stress was put by the media on the deteriorating response of the court to the situation of PINS. It appeared that the court's willingness or capacity to place such youth had dropped precipitately during an approximate five year period. Such reports also noted that the problems of many PINS were both complex and acute, involving types of behavior which shared few if any of the characteristics generally associated with a charge of delinquency. The delinquent and PINS, however, are wedded to a common experience since both are invariably exposed to the formality and futility of family court decision making.

> There has been a drastic reduction in the total number of PINS children placed in the last five years. This situation has resulted in an approxi-

> mate 60% decline in PINS placements between the years 1970 and 1975. In 1970, 922 PINS were placed. In 1975 this number had dropped to 379. (1977, Office of Children's Services Report on PINS and D.C.J.S.-Comprehensive Crime Control Plan)
>
> The PINS children. . .came for the most part from the poorest and most deprived neighborhoods in the City. . .Eighty percent came from health districts, shown by eleven social, economic, and health indices to be the poorest in the City. . .their apartments were repeatedly described. ...as small, dirty and deteriorated. Many of the families asserted a desire to move to better apartments in better communities. . . to remove their children from undesirable companions in the crime-ridden streets. The extent of this poverty is borne out by two statistics. Sixty-one percent of the families were receiving some form of public assistance. The median income for a family ranged between $5,000 and $7,000. . .It is just as pertinent to note that 73%. . .of the children came from broken homes as single parent families. (Office of Children Services Report, Juvenile Injustice, October, 1973.)

Despite this dramatic decline in intervention PINS youngsters were more likely to be placed than were delinquents. This trend suggests that PINS and delinquents were viewed by the court as equally needy or problematic. Various reports implied that such a formulation of placement need was an inappropriate weighting and use of scarce resources. The outcomes associated with PINS and delinquency petitions are more fully delineated through the following passages:

> Sixty-two percent of the robbery charges were dismissed, while only 36% of the runaways and 42% of the truancies were dismissed. If the family court as Gault submitted, is in fact deciding criminal responsibility, these results are most perplexing.

> They are situations which on the surface exhibit criminal responsibility being dismissed at a higher rate than those exhibiting no criminal responsibility. (New York Senate Research Service Report, "Family Court. . .The System That Fails All," May 1977)

> . . .One out of four youths charged with PINS offenses were placed in institutions or community agencies whereas only 13% of the juvenile delinquency charges were placed. . .These dispositions were seemingly related to the tenacity of the complainant in the PINS cases versus the juvenile delinquency cases. (New York Senate Research Service Report, "Family Court. . .The System That Fails All," May 1977)

Findings of the Tracking Study

The charges of serious deficiencies in the court's handling of cases warrant systematic inquiry. The tracking of the experiences of a large number of youngsters with the court provides a basis for answering questions about how long it tends to complete the processing of cases. It also provides information on the extent to which cases are dismissed, the extent of recidivism, and the extent to which adjudicated youngsters are placed.

While empirical research such as that reported here provides a basis for describing systematically what happens in the court, it does not by itself provide a framework for interpreting what is observed. How quickly should the court be expected to complete its processing of cases? Under what circumstances should adjournments be considered obstacles to the timely and equitable resolution of cases? Unfortunately, no clear standards are

available to guide judgments about the adequacy of what can be observed.

Disposition data pose similar interpretive problems. In part the critics charged that cases were being dismissed inappropriately because prosecutors lack resources to prepare cases fully and because complainants and key witnesses often drop out when repeated court appearances are required. Unfortunately, it was not feasible to measure the degree to which cases were dismissed for reasons of this kind. Further, there are no standards regarding the extent to which delinquency or PINS findings should be expected or the extent to which youngsters should be placed. Under some circumstances a dismissal might be considered appropriate even if the evidence were sufficient to support a delinquency or PINS finding. No guidelines are available regarding the extent to which such judicial leniency is appropriate. In the absence of such norms, empirical research cannot be used to draw conclusions about the court but is useful at least in refining the questions which might be asked about the court's performance.

Delinquency

Delay. The media reports on the family court's dysfunction has emphasized the delay associated with a delinquency hearing. Table I indicates that a substantial number of cases, approximately 50%, experienced two or more adjudicatory adjournments in both the Bronx and Brooklyn. The adjournment experience is similar in both boroughs.

Another matter which concerned the press was the amount of time devoted to an adjudicatory hearing. There was very little difference between

TABLE I

The Number of Adjudicatory Adjournments for Delinquency Cases in the Bronx and Brooklyn (percent distribution)

NUMBER OF ADJOURNMENTS	BROOKLYN	BRONX
0	20	19
1	30	25
2	26	28
3	9	14
4	7	5
5+	7	8
Total Percent	99.0	100.0
N	164	202

the boroughs for each of the five categories of delay. The data in Table II suggest on first examination that a very significant proportion (about half) of the total number of cases handled by the family court are sustained for three to nine months. Approximately 50% of the court's cases are resolved within three months. The figures showing cases carried for three to nine months, however, is deceptive since 57% of these Bronx cases and 71% of these Brooklyn cases actually has been adjourned contemplating a dismissal (A.C.D.) That is, these hearings were adjourned four to six months, and if the youngster did not reappear in court on a new petition or for a violation of the condition of the A.C.D., the charges were dismissed. While about 10% of these cases did not meet the latter conditions, and were returned to court, the majority of such cases did not pose any additional burden to the court's calendar or represent any further delay to the principal parties. In effect, the time which elapsed between the judicial announcement of an A.C.D. and the formal outcome of the case was designated in Table II as delay. For most cases, then, these data do not confirm press accounts of exaggerated amounts of time devoted to adjudicatory hearings.

Dismissal Incidence. The incidence of dismissals for delinquency cases was another matter covered in the media. Dismissal rates for delinquency petitions are shown in Table III. The data are presented by borough and by frequency of offense. For all cases studied dismissal rates in Brooklyn and the Bronx are identical. Seventy-three percent or approximately three quarters of the petitions handled in each of these family

TABLE II

The Length of an Adjudicatory Hearing for Delinquency cases in Brooklyn and the Bronx (percent distribution)

MONTHS	BROOKLYN	BRONX
Less than 1	13	19
1-3	38	36
3-6	26	22
6-9	22	19
9 and over	1	4
Total Percent	100	100
N	168	188

TABLE III

Dismissal for Delinquency Petitions by Borough and Frequency of Charge (Percentages)

FREQUENCY OF CHARGE	BOROUGH	OUTCOME: DISMISSED	OUTCOME: NOT DISMISSED	TOTAL PERCENT	TOTAL NUMBER
First	Brooklyn	77	23	100	128
	Bronx	78	22	100	143
Second	Brooklyn	58	42	100	38
and Third	Bronx	62	38	100	55
Total	Brooklyn	73	27	100	166
	Bronx	73	27	100	198

Brooklyn, first and subsequent charges

$x^2=4.67$, $p<.05$

Bronx, first and subsequent charges

$x^2=4.29$, $p<.05$

courts were dismissed. Also shown are dismissal rates separately for first appearance and second and third appearances combined. In Brooklyn 27% and in the Bronx 32% of the cases involved youngsters appearing on second or third charges. The data indicate that the majority of charges were dismissed for both first and repeat appearances. Yet, a dismissal is more likely in the case of initial court appearances. In Brooklyn 77% of those charged for the first time compared to 58% of those appearing on subsequent charges were dismissed. (x^2=4.67, $p<.05$). In the Bronx 78% of those appearing for the first time compared to 62% of those making repeat appearances had their cases dismissed (x^2=4.29, $p<.05$). The data for both courts and for both those defending initial and subsequent charges lend some credibility to the critics' contentions that the high incidence of dismissals in delinquency cases is a pervasive phenomenon.

Findings and Placement Rate. The boroughs were similar in their rates of delinquency findings but appeared to be different in their placement patterns (Table IV). In both boroughs 27% of the youngsters charged were found to be delinquent. In Brooklyn 4% of the youngsters brought to the court on delinquency petitions were placed; in the Bronx 9% were placed. The difference is not statistically significant (x^2=1.52, $p<.25$). In Brooklyn when placements are compared to delinquency findings 16% of those found delinquent were placed while in the Bronx 34% of those found delinquent were placed. The difference does not achieve statistical significance (x^2=3.42, $p<.10$). The Brooklyn court handles two and one-half times the number of delinquency cases as does the Bronx. If data from the two boroughs

TABLE IV

Outcomes for Delinquency
Petitions by Borough
(Frequencies and Percentages)

OUTCOMES	BOROUGH		
	BROOKLYN	BRONX	
Total Petitions	166	198	
Found Delinquent	45	53	
Placed	7	18	
Percent found Delinquent	27	27	
Placement as Percentage of Petitions	4	9	$x^2=1.52$, $p < .75$
Placement as Percentage of Delinquency Findings	16	34	$x^2=3.42$, $p < .90$

are merged and weighted on the basis of relative family court workload, 5.6% of those charged are placed. This figure very closely approximates the placement rate of the family court during the period that it was investigated by the media.

Status Offenders

There was less delay associated with a PINS hearing than a delinquency proceeding. The data presented in Table V indicate that two-thirds of the PINS cases in each of the family courts required no more than a single adjournment. The relatively extended hearing of three or more adjournments involved 15% of the Brooklyn and 23% of the Bronx PINS caseload. The distribution of adjournments for status offenders in Brooklyn and the Bronx is presented in Table V.

In general the status offenders' cases were sustained for considerably less time than were those of the delinquents. As Table VI indicates approximately two-thirds of the PINS cases in each of these family courts were resolved in less than three months. The remainder of the caseload required three to twelve months of judicial deliberation. With both delinquents and PINS a sizeable proportion of petitions remaining active between three months and a year were adjourned contemplating a dismissal. This conditional status was assigned to 67% of the Brooklyn cases and 57% of the Bronx cases which were active for more than three months.

Comparing Delinquents and Status Offenders

Despite the differences between PINS and delinquency cases on process

TABLE V

The Number of Adjudicatory
Adjournments for PINS cases
in the Bronx and Brooklyn (percent distribution)

NUMBER OF ADJOURNMENTS	BROOKLYN	BRONX
0	40	37
1	27	28
2	18	13
3	4	8
4	6	5
5+	5	9
Total Percent	100	100
N	160	140

TABLE VI

The Length of an Adjudicatory Hearing for PINS cases in the Bronx and Brooklyn (percent distribution)

MONTHS	BROOKLYN	BRONX
Less than 1	35	37
1-3	36	27
3-6	18	17
6-9	7	9
9-12	3	9
12 and over	1	1
Total Percent	100	100
N	155	143

variables, the outcomes associated with these hearings were remarkably similar. Three-quarters of the delinquency petitions in Brooklyn and the Bronx were dismissed. The figures for PINS youth are similar. Table VII indicates that 61% of the youngsters formally charged with a status offense in Brooklyn had their cases dismissed; 79% of such cases were dismissed in the Bronx.

These data do not support the media's contention that youths charged with status offenses returned to court on delinquency charges. The study determined that only 10% of the Brooklyn and 13% of the Bronx youths charged with a PINS offense subsequently recidivated on a delinquency petition. However, the public's concern that the court was more likely to place status offenders than delinquents is substantiated by the data. In the two family courts combined, 9% of the youngsters charged with a PINS offense were placed compared to the 5.6% incidence of placement for delinquents.

Conclusion

As indicated above no standards are available which might be used in judging the court's performance on such variables as the time which elapses in the processing of cases, the number of adjournments which preceed a finding, the extent to which cases are dismissed, and the extent to which youngsters are placed. The tracking study findings, however, do show patterns which the court's critics might draw upon to support their arguments. In a substantial proportion of cases several months or more elapse before a decision is made on delinquency or PINS charges. Cases often are adjourned repeatedly before they are resolved. Most charges are dismissed. The proportion of youngsters actually placed is small.

TABLE VII

The Rate of Dismissal for PINS
Cases in Brooklyn and the Bronx
(percent distribution)

BOROUGH	DISMISSED	NOT DISMISSED	TOTAL PERCENT	TOTAL (NUMBER)
Brooklyn	61	39	100	158
Bronx	79	21	100	131

Findings of the tracking study can be used to support the argument that some part of the delinquency and PINS problem can be traced to the family court. What the court specifically contributes to this problem is a matter of great interest and will be more fully examined in subsequent chapters. This chapter already has identified a number of problem areas. Alternate explanations for the patterns of delay and attrition documented in this chapter will be given in the following two chapters.

CHAPTER III

INTERNAL DISORGANIZATION AND INEFFICIENCY: A TRADITIONAL EXPLANATION OF THE JUVENILE COURTS DILEMMA

One explanation of the particular role the court plays in dealing with juvenile problems lies within the structure of the court itself. The operations of the family court have been affected by various elements -- regulations and organizing principles -- which define the court process. This chapter attempts to identify such of these variables which adversely affect the substance and tone of the services delivered by the court. The relationship between such structural variables and the work situation of various professional groups within it also will be analyzed. Finally, the manner in which various staff members have adjusted to their work situations will be explored.

Overcrowding and Confusion

Confusion has tended to mark a number of the more visible activities which are associated with the family court. The waiting areas in the Bronx and Brooklyn courts are quite congested resulting in uncontrolled activity and noise in the physical space that is adjacent to the courtroom. The tension associated with appearing for a hearing is intensified because complainants wait in the same areas for extended periods of time, with their "adversaries", the defendants. In such situations, physical encounters between defendants and plaintiffs erupt, and while they are almost immediately

defused by uniformed court officers such outbursts further contribute to the oppressive hectic climate of the waiting areas.

This confusion is transported to the courtroom since the hearing and intake parts of the family court maintain an open-door policy. Various persons involved frequently enter and leave the courtroom while a hearing is in progress. This distraction is compounded by a cross-current of conversation unrelated to the formal proceedings but involving various court-related professionals who are peripherally related to or observing the hearing. The conversations, physical movement, and closing of doors within the hearing and intake parts of the court disrupt the solemnity and symbolic authority usually associated with a judicial event.

The extent to which these diversions are allowed to affect the substance and tone of the proceedings depends, in great part, upon the temperament of the judge. Those judges who wish to affirm the solemnity and formality of the court carefully monitor the behavior of the non-professionals coming into it. They also regulate the movement of professional and non-professional personnel into and out of the courtroom. Alternatively, the judge who is less concerned with formality is unlikely to enforce such rules. Whatever the judge's perspective, however, such are characteristic of the intake and hearing parts of the family court.

> It is a sloppy court. There's much more decorum in other courts. There's a laxity here, side conversations seem to be ignored during the proceedings and guards are always joking around. People seem to be moving quite regularly into and out of the courtroom. (Judge)

> Sure, there's a lot of coming and going in the courtroom. But the way I see things, it's just unavoidable, because so many things have to be done; the judge may want records, or have to sign forms. In order for us to handle the large volume of cases and complete these other responsibilities, we have to have access to the judge. (Court Liaison Officer)

> I don't think some judges are aware of how they appear. If the judge takes responsibility for his own decisions, it ties everything together. It's like a play, the unifying force is the judge. The judge has the ability to set the tone of the courtroom, to make sure that the courtroom is quiet, that people know what is going on. But the judges scramble around like everyone else. (Law Guardian)

Unrealistic Scheduling

Prior to the hearing, both complainant and defendant are generally notified to appear in family court at 9:30 in the morning on a specified date. The parties, therefore arrive in court anticipating that their case will be heard before noon. The scheduling policy of the family court, however, erroneously assumes that the volume of cases assigned to the morning session can be managed by the hearing and intake parts of the court.

The latter simply do not have the resources necessary to manage the number of cases assigned to the morning session. The result is extended waiting periods for many clients and court-related personnel. Persons requested to appear in family court at 9:30 languish in the waiting areas until late in the afternoon, a common situation placing extraordinary demands upon the patience, time, and commitment of the client and of some court personnel.

> I just don't have the time to put into the work that I'd like to be doing. It takes me two months to react to a kid not reporting. I should make a home visit but just can't get into the field because I'm waiting to appear in court. I hate it. It's frustrating. I bring my work home with me. It's frustrating to my clients also because when they call, I'm not here. (Supervision Probation Officer)

> We frequently sit in court from 9-5. To the court, it would seem our work is meaningless. You just have to wait your turn. Maybe if I'm lucky, I'll get out before lunch, but that's almost the whole day. How do you get started working when you just get out of court at 2:30? (Supervision Probation Officer)

> The court's responsibility is to help people get in and out of here as quickly as possible, but this simply doesn't happen. Frequently, clients are made to wait most of the day before their case is called. Making people come and sit all day is a shame. (Uniformed Court Officer)

The Bridgeman

The order in which various cases are to be heard by the family court judge is determined by a bridgeman (Uniformed Court Officer). This court official essentially functions as the gatekeeper to the various intake and hearing parts. Unfortunately, his decision making is not based on a uniform or fixed set of standards which would enable others involved in a hearing to calculate the potential length of their waiting period and concomitantly reduce the frustration associated with the pre-hearing experience. Instead, the bridgeman establishes the sequence of cases on the basis of (1) the general mood or preference of the judge; (2) a private lawyer's association with a case (the time of this professional group being perceived as relatively

more valuable and (3) his relationship with various professional personnels and their relative influence upon him. Prior delays associated with a case or the needs of a particular client generally do not affect the decision making of the bridgeman.

> Let's face it, a lot of things get done around here on the basis of personal influence. Getting your case heard quickly is no exception. If you have a good relationship with a bridgeman, he will call your case right away. (Official, Bureau of Attendance)

> There is a simple system for calling the calendar. The bridgeman must rely on the fulfillment of certain conditions: all the paper work on the petition must be done and all parties must be present. If these conditions exist, then the cases of private lawyers are given preference. (Mental Health Service Official)

> UCO's have a great deal of say about how the calendar is called. They're supposed to confer with the judge, but unless a judge has a particular interest in a case, i.e., a homicide, they'll leave the calendar call to the UCO. (Supervision Probation Officer)

Professional Inter-relationships

The family court is comprised of a number of administratively separate but highly interdependent units. In order for it to function effectively, these distinct professional groups must engage in various types of cooperative behavior. Without such cooperation there are breakdowns at various points in the judicial process resulting in delays.

Specific units of the family court, however, clearly hold an adversarial relationship, shaped by their variant functions and perspectives.

The corporation counsel and law guardian, for example, are expected to represent the divergent interests of the complainant and defendant. Such formal conflict has therefore traditionally been tempered by various unofficial forms of bargaining yielding mutually beneficial compromises.

These groups' willingness to negotiate is wedded to the very delicate balance of power that exists within most courts. Usually neither of these groups has been capable of dominating the other. The uncertainty associated with the outcome of each phase of the hearing underpins their willingness to conciliate differences. Negotiative sessions enable the prosecutor and defense counsel to reduce the risks and the time associated with pending hearing.

Cooperation within the juvenile court has historically been based on the dominant power position of various professional personnel associated with the court. For instance, the judge has traditionally retained the authority necessary to administer the probation department while the probation officer was exclusively responsible for developing the placement plans of the court. In general, the placement plans of the probation officer could be revised or challenged only by the judge. Generally, the texture and flow of a hearing was shaped by the preferences of the judge.

Both traditional working arrangements and power relationships have been dramatically altered in the New York City Family Court. Recent legal decisions and legislative statutes have curbed the discretionary authority of the judge. The probation department is now a distinct administrative

unit no longer subject to the administrative authority of the court. Further, the probation officer's dominant advisory role during the dispositional phase of the hearing has been curtailed by the emergence of a Legal Aid Social Work Unit. Finally, the recently expanded funding base of the Legal Aid Society has significantly increased the power of the law guardian relative to the corporation counsel. These changes in the court process have caused previously subdued professional differences to emerge between various units of the court.

The ascendance of particular groups has led them to try to exert even greater influence over particular parts of the judicial process. This in turn has produced defensive maneuvers from the less powerful groups, more thoroughly exposing the unwillingness of various units to accommodate to organizational change. The apparent consequence of these interdepartmental skirmishes is that various units of the family court are working at cross-purposes.

> I'm part of a non-organization organization. There is nothing to tie it together, no one has overall responsibility. There are a number of bureaucracies. Everyone is doing his own thing. Each part of the system is concerned with keeping itself going and maintaining a power base. Concern for people is lost. (Supervision Probation Officer)

> There is too much of a tendency for each part to blame the other for the system's failures. If we worked together, instead of always working against each other, we might be able to get a lot more accomplished. There are areas we work with the corporation counsel and law guardians. For instance, I was able to get a law guardian to

> make an admission on a PINS girl at arraignment so that we could remand to Euphrasian. This is quite rare though. Every time we recommend, we expect a fight from the law guardians. The law guardian tends to fight all removals from the home even when the home is not good. I don't blame them though; that's their job; it's just the way things are set up; we're generally at each other's throats. (Investigation Probation Officer)

> There is a constant push and pull between us and corporation counsel on cases which should go to court. For instance, a kid has been arrested eleven times, comes in a twelfth time on a mugging. Intake sends him up and the parties are told by corporation counsel that there is insufficient information for drawing the petition. Intake asks for verification from corporation counsel that no prima facie case existed. With verification, the next time the papers carry a story on how probation denies people access to the courts, probation can show that the prosecutor is responsible, but no one listens. This, of course, makes it more difficult for the corporation counsel and the probation officer to work together. It just raises the level of suspicion. I'll tell you though, they just go into shock around here from the claim that probation denies people their day in court. (Probation Intake)

Poor Interdepartmental Communication

These frictions within the family court have contributed to the reduced communication between various departments. Few, if any, formal mechanisms are available which enable staff to discuss shifts in policy or problems within the organization. Memos are generally distributed departmentally, and therefore do not address the broad range of interests which may be associated with a specific set of issues. Nor are interdepartmental meetings called on a regular basis. As a result, work procedures

are established reflecting the highly focused perspectives of each professional unit.

Interdepartmental communication could both define and narrow the areas of conflict between the principal groups of professionals functioning within the family court system. Alternatively, the absence of such contact is likely to heighten their commitment to a group or professional standards rather than their overall organizational identity. The maintenance of such professional distance contributes to a departmental parochialism which denies the value of inter-departmental cooperation or of the perspective of the other professionals.

> There is very little communication between probation and the courts (he showed the interviewer a schedule of the court parts). I stole this. The court doesn't even provide us with this kind of basic information. The branch chiefs see the head administrative judge very occasionally. (Investigation Probation Officer)

> Nothing but a lack of meshing among the department has been on our minds for some time. In fulfilling its social and legal obligations to the court, the Probation Intake Department has to deal with the corporation counsel as well as the court. Nobody in one department talks to anyone in the other. For example, a doctor from Brookdale Hospital came in because his car had been stolen. The kid who stole it had been arrested and recogged and the car was to be held as evidence until November 8, the date of the hearing. The doctor needed his car, and when he went to the police they told him to go to the D.A., meaning corporation counsel. The doctor then came to one of the administrators of corporation counsel and he said that corporation counsel couldn't release the car but Probation Intake could. Now Probation Intake doesn't have any more authority in this area than corporation counsel, but this is typical of the tug of war that goes on between the two departments. The two heads of the departments won't communicate with

each other or put anything on paper. There have also been efforts to schedule a meeting between the two departments but they have all failed. (Probation Intake)

There are many reasons for the communication problems within the system. For example, I took a message from a private attorney. I feel that because he is an officer of the court, I should afford him some courtesy. He wanted to know when a case was calendared. I gave the message to the worker who said, "I don't talk to attorneys. Let him call the court for a date." (Supervision Probation Officer)

There's no formal line of communication, it's up to the individual attorney. For instance, at disposition, probation is not obliged to tell us what their recommendation will be when they make it. As a result, we're less prepared. (Law Guardian)

Periodically, the judges meet with the chancellor of the Board of Education, the head of probation, and other agencies with which the court works. Within the court, there are different judicial committees, e.g., a judge is chairman of the Detention Committee. These committees include all the boroughs and try to alleviate problems. The committees don't meet as often as I would like. Meetings are held after work, and it is a problem getting work done, because so much time is spent on the bench. (Judge)

Breakdown of Information Network

The family court's information system has been short-circuited by technological and organizational breakdowns. These services ideally were intended to: (1) guide an individual to a specific destination; (2) facilitate telephone contact between various professionals and (3) provide the information or technical skills necessary to connect parties outside the facility with the personnel of the court. The extent to which such an information network can perform these functions depends upon the successful meshing of

technical apparatus and human skills. Failures in the communication system exact costs upon the organization's image within the community and its efforts to optimally utilize scarce resources. If parties to a case are consistently frustrated by being directed to inappropriate areas or by being unable to make telephone contact with their lawyers or probation officers they are unlikely to return to court. Their experiences also will be transmitted to other potential or actual clients of the court. Similarly various members of the court's staff maintain frequent contact for the purpose of sharing and locating information. When the telephone system, as frequently happens, yields inaccurate extension numbers, disconnections, and incorrect connections, the professional staff must invest greater amounts of time to complete their task. An information system regularly unable to perform its primary functions can confuse and partially paralyze an organization.

> The lack of communication in the court is nowhere more apparent than in the isolation of one department or section of the court system from another. There seems to be no central place where one can get necessary information about room numbers, telephone extension numbers, let alone where to find people. It does not seem to occur to staff to make suggestions that might assist an outsider asking directions; they not only don't know, they don't care. (Uniformed Court Officer)

> The telephone system is atrocious. There's no central place to get information about telephone extension numbers. None of the court functions can be carried out by telephone. Everything is done by getting up and walking. There is no secretarial help so you can leave a message, but there is no one to take the message. (Investigation Probation Officer).

> Time-wise it's difficult. If we were all together, I could find a P.O. much more easily instead of making phone calls. The phone system just doesn't work. Originally the switchboard would give me the information, i.e., P.O. in the field, connect me to the P.O. supervision, etc. Now each P.O.'s number is listed separately. I have to make more calls which is more time-consuming. Many times a C.L.O. doesn't have this extra time. (Court Liaison Officer)

> The system or non-system regarding extension information is extremely frustrating. There is no central service which can give information on all departments. A list of extension numbers exists, but it is not up-to-date. I called one number given to me as the information service, only to be told to call another number. When I did so, the second number insisted the first was the right one, and I should insist on their giving me the information. I asked if he could explain the system, he replied, "I'm too busy." Then I asked: "Whom am I talking to?" and he hung up. (Supervision Probation Officer)

Poor Record Keeping

Flow of information within the family court is also disrupted by an inadequate record-keeping system. Records of probation and of court administration are not coordinated, so a complete set of information on a particular delinquent cannot be located within either department. The record-keeping systems of each department are also vulnerable to both error and informational loss.

There is no central pool information on all delinquents available to each of the five boroughs. Consequently, a criminally active youngster in Brooklyn committing an offense in the Bronx is likely to be processed

as a first offender by the Bronx court. Clerks also are unable to consistently verify the information provided by the delinquent. For instance, a youngster may provide both the court and the probation clerk with a number of aliases instead of his or her given name, a practice which can generate several different files for the same offender. The court and probation are also frequently unable to distinguish between youngsters whose mothers have the same first initial and surname, yet decisions of probation officers and judges will be made on the basis of such inaccurate information.

Inaccessibility

Finally, both sets of records are inaccessible to many professionals affiliated with the court. A probation file may circulate to any one of four different types of probation officers. Yet clerks in the record room are unable to determine where the file is located at any given time, since the system fails to consistently monitor the flow of its records. This situation has resulted in files being permanently or temporarily misplaced.

> The record room said they didn't have a file on a particular kid. Since I knew the kid had a record, I went down there. I discovered that the kid's mother's name was spelled wrong, so the card was filed twenty spaces beyond the correct space. While there, I discovered that there are cards on file of juveniles who are now thirty-four years old. I've volunteered to clear out the file. Removing cards on those people who are over twenty-one would eliminate about half the cards. The more outdated cards there are, the more confusing it is to find a piece of information that you need. (Probation Intake)

> Family court should have the criminal court system of punching a button and getting a kid's criminal record. We have trouble tracking down juvenile records. If a kid has been arrested in another borough, we don't know it unless we call someone in the other borough who is willing to look up the records. (Supervision of Probation Officer)

> Part of the problem is we have so many people coming into the record room and taking files out of here. When a judge has time, he will sign vouchers for an attorney to get paid; a file could sit up until a judge has time to sign them. Also, probation is not supposed to take records out of this room, but some do. Sometimes judges will hold onto cases. We look for them and find out that's what happened to them, while they're saying we have them. They're not always charged out, so sometimes we don't know who has them. Someone could easily come in during lunch hour when there's nobody here in the record room and take a case. (Record Room Clerk)

> Everytime a child comes in here there is a new petition, so that one kid may have several petitions at different stages of the court process. Lots of times, of course, no one even knows that there are other petitions pending. There is also a problem here with names, (nicknames, false names, etc.). Kids come in here with aliases and we can have a number of records on the same kid. Sometimes we catch it, but most of the time it's just missed. Another problem is that it's hard to get a complete record on a child because the probation and the court record rooms don't operate on the same numbering system. (Court Clerk)

Lack of Continuity

The services delivered by the court also have been affected by the fragmented responsibilities of various professional personnel. Their highly focused or time-limited functions have served to reduce the level of accountability in the decision making process. Since various professionals

are assigned to particular portions and/or dimensions of a case, each one, in a sense, is serviced by a set of professionals playing interchangeable parts.

The family court judge rotates between boroughs and parts of a specific facility. His responsibility for a specific set of cases is terminated once he is transferred to another courtroom or building. Balance in case flow is maintained by simply shifting judges within a fixed number of courtrooms. The name, disposition, and expertise of the judge might fluctuate, but the title and function remain constant. In the same way, the corporation counsel is expected to perform the prosecutorial function within the hearing or intake parts of the family court. He does not move from one court to another for the purpose of presenting a particular client's case. Rather, his contact with various clients is established, maintained, or eliminated on the basis of their case-flow into and out of specific courtrooms.

Probation's responsibilities with the family court also are highly segmented. Each set of probation officers performs a highly focused set of tasks intended to form a coherent probationary experience. Unfortunately, the administratively distinct yet functionally interrelated nature of each probationary group's responsibilities has contributed to an inefficient distribution of scarce resources. The consequences associated with this division of labor are described in the following passages:

I've counted cases where there are five or more adjournments before fact-finding. This will frequently happen on a tough case. Now, the judge could refuse the adjournment request and make the lawyer go on trial that day. Almost magically, you'd find the lawyer is ready. I think, in part, some judges go along with this, hoping they'll be rotated out of a court before they have to make a decision on one of those tougher cases. Really, they're just shirking their responsibilities. (Probation Administration)

The corporation counsel's function is prosecutorial in its technical aspects, but we are frustrated in doing our job because we don't follow through to the end of a case. I tried the case of a boy who broke into a house and raped a girl, who was a guest there. He should have been given a long period of rehabilitation, but, to tell you the truth, I don't know what happened to him after the finding. (Corporation Counsel)

I have sometimes been given a new case before I have had a chance to see the youngster. Oftentimes the kid just should not have been put on probation. It's hard to say why the I&R people put such youngsters on probation. Part of the reason, I think though, is because the I&R officer is not going to see the kid again, so it's no skin off his nose. I believe recommendations would be more thoughtful, and case loads would go down, if the same officer who makes the recommendation keeps the case. (Supervision Probation Officer)

The rotation of judges basically means that the same judge does not follow through on a case to the end. Judges not only rotate among the different parts of a court, but among the different boroughs. I'll tell you, before rotation, judges were more interested in the welfare of the kids. Now it seems a lot of them are just too willing to adjourn cases in order to save themselves some work. (Law Guardian)

Pressures Within the Work Situation

Organizational conflict is not inherently destructive. Conflict can help to call attention to important organizational problems. Conflict can provide a stimulus for introducing needed changes. Similarly conflict may provoke particular groups to increase the amount of energy or imagination which they devote to their work. However, left untended, intergroup tension can disrupt or damage the productivity of an organization. Groups in conflict will engage in defensive or offensive maneuvers which ultimately affect both morale and output of staff. Intergroup conflict within the family court will serve as the focal point for this section of the chapter.

Pressures associated with court work come from both within and outside the court. Both evade traditional working relationships. The quality of professional life within the family court is affected by a number of internal structural obstacles. As was suggested in the previous section of this chapter, various staff groups are either unwilling or unable to address common problems on an interdepartmental basis. Each of the units within the family court may be characterized as an isolate. Each has staked out claims to particular court-related functions on the basis of its superior expertise, mandated role, or tradition. Areas of overlapping responsibility have served as a focus for interdepartmental conflict. Areas where tradition or authority are presently unclear tend to provide even greater areas for conflict.

A second set of pressures arises from the fact that the court can be disabled by the external political environment within which it functions. An institution's milieu can control both its resource and client base. If, for example the flow of clients to an agency increases at a time when its level of funding is reduced, the organization may suffer. Recent policy decisions by various city agencies have served to underscore the vulnerability of the court and its ancillary agencies.

The city government's decision to contract the funding base of certain services affected the working conditions of both probation and clerical staff, contributing to a reduction in services they performed. In effect, the greater demand for services when coupled with the decreased availability of resources tended to disrupt the work pattern of both the probation and clerical staff.

> We can't see all the kids that are being referred to us. Our caseloads have soared at least in part because we're given kids that are either over age or can't be placed. The kids who should have gone into placement are the ones who are likely to get into trouble again. We are mandated by the law to see a kid once a week but that's just impossible. I have kids who I haven't seen in months. What I've done is stop seeing the deadwood on my caseload. Basically, the deadwood consists of those kids that either don't need my help or are such serious offenders that nothing I could do would make a difference. (Supervision Probation Officer)

> We simply aren't able to give certaintypes of cases the attention they should be receiving. For instance, I had a case that involved a fifteen-year-old who killed his niece. It was an exercise in poor judgement. He was baby-sitting, and the baby was teething, cranky and constantly crying. The baby fell off the table and went into convulsions. The kid

> shook the baby, tried artificial respiration but the baby died. The mother of the kid and I agreed that ongoing therapy at the University Consultation Service would be helpful. Years ago, because of the severity of the case I would have placed him on probation for a short time just to have some follow-up. But now there aren't enough officers to provide such follow-up services. In a blanket, city-wide policy of retrenchment, people who most need services lose them. These are also the people who have no political clout. (Supervision Probation Officer)

> I feel frustrated in not being physically able to do what I've done in the past. I really can't make field visits any more. Field visits were such an important part of our job. It enabled us to better understand the kid, through both his family and immediate environment. All of this information of course, made us more effective counsellors. Now, though, it's practically impossible to engage in such counselling. There is no law saying we can't do home visits, but it is practically impossible if you have to handle court cases all day. What it comes down to, is our caseload and responsibilities simply won't allow for much home visiting. It may be two or three months before I realize that I haven't seen a kid. At that point, I'll send him a notice, then if he doesn't show up, the tendency is for me to forget about him. (Supervision Probation Officer)

Public sector retrenchment has resulted in marginal salary increases, a reduced number of administrative slots, and a greater reluctance on the part of upper level personnel to depart from their present positions. In addition, the more subtle professional satisfactions that are usually derived from providing quality services have been tempered by the realities associated with managing a heavier case load. The increased responsibilities and diminished rewards associated with particular types of court-related work have increased the sense of futility and lowered morale among many staff groups.

> I'm really frustrated in not being physically able to do what I'm supposed to do. None of us has the time or the energy any more. There are too many cases and too little personnel. Most of us are burnt out. We're also bothered by the fact that there seems to be little opportunity for advancement in the department. Morale in the department is extremely low. (Supervision Probation Officer)

> We are not very efficient. Basically, we have just enough prosecutors to cover every courtroom. The attorneys generally come in early and spend the entire day in a part. Their other work never gets done. They have very little time to prepare a case or get witnesses into court. It's so incredibly futile, five minutes to prepare for a case. Let's face it, when you have so many cases and so few prosecutors how can you expect to function. (Corporation Counsel)

> Oh, the budget problems really hurt us! In our last contract negotiation, more money was given to inexperienced workers and less to experienced. The salaries and minuscule increases are just inadequate. I have to work two jobs to make ends meet. I sell cameras two nights a week, and on Sundays I work from 4 a.m. to 6 p.m. in my cousin's bagel factory. I have a wife and two kids, and my takehome pay from this job is less than it was two years ago because they took away the 2% that the city used to pay toward our pension. (Court Liaison Officer)

Conflicts among the court's working groups have consumed and diverted a significant share of the family court's scarce resources, since various groups at cross-purposes expend energy neutralizing the efforts of their adversaries. The tensions and suspicions which have resulted are described in the following passages:

> When I give a report to different groups, each of them tries to manipulate it to meet his/her own needs. Frequently, the Bureau of Mental Health Services is caught in the middle. It's really uncomfortable constantly being on that hot seat. (Bureau of Mental Health Worker)

The law guardians keep their staff in the picture at all levels, and many times work at cross-purposes with probation. Sometimes they make plans without telling us. Some law guardians are guilty of unprofessional conduct, like making rude comments about the P.O.'s. (Investigation Probation Officer)

The basic problem is there isn't a great deal of sharing of information. Often we don't have access to records; they're very guarded about them. For example, we wanted to see the psychological reports on a case before we made a recommendation. They were reluctant to show us the reports -- the P.O. said: "Why do you want to see it? What are you going to do with it?" He said he'd have to ask his superior, which wasn't really necessary. We ended up having to ask the judge for a copy. (Legal Aid Social Worker)

Our problem with Legal Aid Social Workers (LASW) is that there may be a duplication of effort or a difference of opinion about what should be done for a kid. Sometimes the P.O. doesn't know the LASW is involved. In fact, the law guardian may be trying to avoid a finding by referring a case to the social worker. The activity of the Legal Aid Social Worker should be included in the probation recommendation, but the court liaison officer frequently misses it. (Investigation Probation Officer)

The law guardian stuck to her objection to the remand and demanded that it be noted in the record. I couldn't quite hear what was said here, there was reference to some technical term which I assume would intensify the objection and the judge's overruling. The judge lost his temper, he raised his voice, and said: "This is my order and you can appeal it if you want to." There was an odd sense of a running battle in this exchange that seemed to have no particular relationship to the individual case: as if the law guardians always object to remand and often in a threatening way, as this law guardian was certainly doing, and the judge was fed up. (Observation)

Staff members of the court have devised informal responses to the structural obstacles described here. They have concluded in certain instances that needed services can best be provided by bypassing formal procedures. Through their unofficial initiatives, they attempt to cut through the red tape which often snarls the processing of cases. Through informal arrangements court personnel have adjusted for some of the deficiencies in formal interdepartmental relationships. Characteristically these informal efforts are precipitated by shared interest in a specific case, client, or problem. Frequently, through these informal means joint service plans are developed for specific clients. The isolation of various sub-units of the court, therefore, is frequently bridged by line staff.

> The longer I'm in the field, the more conflicted I become. What can you do with a kid who doesn't have the money to pay for transportation to a treatment clinic? Let's face it, the court's not going to come up with it either. So the kid misses his appointments, or what about the kid that's truant or acting out? What are you going to do, move him through the court and then repeat the process? Then, of course, he returns to the street with no job skills or treatment program. I've decided that the family court is not the answer, so I try to do what I can where I can for these kids and avoid bringing them back here for another speech and no help. (Supervision Probation Officer)

> My good relationship with Legal Aid and the court officers is paying off now. It gives me a little edge. My cases are called sooner than others. I don't have too much trouble negotiating the system. i.e., filing petitions. Because I've developed relationships with people in the petition room as well as with clerks, I can move petitions from one place to another by myself. Also knowing the

judges and court officers gets me out faster. A lot of time can be wasted waiting. These kinds of edges help me avoid those waits. (Supervision Probation Officer)

If I know a Legal Aid social worker is in the picture, I will call the Legal Aid office. I've found that despite all of the departmental problems, it is possible to work cooperatively. Sometimes we can split up the work; for instance, the social worker can make the home visit, refer a kid to a special school program or take a kid for a placement interview. The important thing is to keep in touch. (Investigation Probation Officer)

I tend to have a lot of contact with law guardians because I want them to concur with my recommendations. When the law guardians object, it's often because they don't understand the situation. When I give them needed information on a case, they tend to share what they've learned and don't see me as an adversary. (Investigation Probation Officer)

Accommodative Techniques

The stresses and strains associated with functioning in the family court severely test the psychic resilience of most staff. In order to blunt these pressures, workers often employ one or more insulating techniques. These enable the workers to maintain some distance between themselves and the stressful situation. Some cope with the pressure by focussing on their occasional successes, giving much less attention to the serious problems they continually encounter. An alternate scheme frequently used by professionals is to ignore the implications and consequences of their work, and instead concentrate on the mechanics associated with completing particular tasks.

The professionals' efforts to act upon these pressure areas at best yield a temporary improvement in the work climate of the organization. The invariable slow-downs and build-ups in organizational pressure may eventually result in workers leaving the family court, their final "accommodation" to an undesirable work situation.

> What you got to do is have your successes last a long time. I had a pretty tough delinquent who got high and broke into a bar. His placement with DFY was pending, so I went to criminal court to plead for the charges to be dropped. Luckily, the complainant didn't show. Well, he did so well at DFY camp he was asked to become a staff member. He sees me everytime he comes home. He wrote me a letter, whereas he couldn't write before. This kid's improvement has kept me going for two months. (Supervision Probation Officer)

> A lot of people just look at their own piece of the court action. They're only interested in getting their piece of the job done. No one seems to care about how their job affects other parts of the court. Like, for instance, probation intake's work affecting the corporation counsel and vice versa. They just pigeonhole their work and move ahead on a straight line. It's at that point that the job becomes entirely mechanical. (Intake Probation Officer)

> My plan is to try to get out of the department. Everybody here is professionally frustrated. Most of us are still plugging away, we're so conditioned to do something. It takes time to realize we're up against impossible odds. No matter what we try, we're going to accomplish little, if anything. (Supervision Probation Officer)

Conclusion

This chapter has partially demonstrated the reality of the New York City Family Court process. The dysfunction of specific elements of the family court's structure as described here is the most visible and traditionally employed explanation for case attrition and delay. However, such problems also can be traced to another set of circumstances which are more central to the historic development of the family court. The social forces involved in these factors have effectively redefined the context and outcomes associated with family court decision making. This alternative explanation of crucial factors in the court's breakdown will be presented in the following chapter.

CHAPTER IV

THE CIVIL LIBERTARIAN AND THE PLIGHT OF THE FAMILY COURT: AN ALTERNATIVE EXPLANATION

The problems which have recently affected the Family Court of New York City also can be attributed to the unbalanced power relationships between various groups of court-related actors. This situation has severely limited the court's capacity to either articulate or enforce its viewpoint. It has also greatly affected both the duration and outcome of many family court hearings.

Varying Perspectives of Court Personnel

The personnel of the family court frequently have competing points of view since their professional contact vis-a-vis the delinquent is colored by their commitment to legal procedure, rehabilitation, or control. These three problem solving approaches are generally not embraced in a pure form by any of the professional personnel. Instead, an eclectic mixture of these approaches underpins the activity of various groups. Each, however, tends to emphasize principles associated with one of these three approaches.

The ideological perspectives of the judges, lawyers, and corporation counsel are in great part a product of their legal training and expertise. However, the nature and extent of this commitment toward legal procedure varies both within and between these groups. Further, the judge's frame of

reference is shaped by the family court's historical commitment toward serving the best interests of the youngster -- a point of view which has traditionally affected the composition of the court's work force as well as the judge's interpretation of the judiciary's role. In other courts the judge is responsible for interpreting and enforcing the law. Within the family court, however, the judge's role as arbiter has been expanded to include quasi-legal and/or non-legal issues.

The law guardian and corporation counsel also are oriented by both their training and commitment toward the judicial process. Their performances, however, are tailored to fit the needs of their distinct constituencies. The law guardian is responsible for representing the interests of the defendant, while the corporation counsel is expected to present the charges on the petition. During the course of a hearing, the corporation counsel functions as a quasi-prosecutor presenting the state's case, cross-examining witnesses, and representing the interests of the complainant.

As has already been suggested, the judge, law guardian, and corporation counsel abide by the legal rules and sanctions which govern the family court hearing. All are concerned with guaranteeing the juvenile certain due process rights. However, while all these groups are uniformly concerned with preserving and applying legal procedure they may perform very different functions within this general context. The distinct responsibilities of the corporation counsel, lawyer and judge have shaped their perspective; differences in clientele and institutional roles have influenced the manner

in which they apply their fundamentally similar skills. Their differences are illustrated in the following three quotes.

> I believe that the extension of adult rights to juveniles is just. They should also face the same penalties. The effort needed to prosecute these cases is not worth the consequences to the kid. Until we find some way to help these kids, at least we've got to keep them off the streets. I think our biggest problem right now is that we have all of the safeguards for the defense that are available in criminal court, but none of the penalties. Just recently, a judge said, "I'll make a finding, but I'm going to dismiss the case at disposition, so I'll do it now." This was for a burgulary in a school. (Corporation Counsel)

> With delinquency petitions we mainly deal with corporation counsel. My attitude and that of most other law guardians is to avoid findings. This is our job. I will do an admission for a lesser plea. We also go after withdrawal of petitions. First we speak to the complainant. We introduce ourselves and probably should explain they don't have to speak to us. We mainly don't want to antagonize the corporation counsel, because he/she may want an A.C.D. (adjournment contemplating dismissal), or an adjournment on a later date. Actually this is my approach. Some law guardians might not care what the corporation counsel has to say. We use the same argument for withdrawal as for A.C.D. Another way the petition may be withdrawn is if the complainant is nice or becomes friendly with the parent of the respondent or lives in the same neighborhood as the respondent. (Law Guardian-Legal Aid)

> There is a philosophy in family court that kids should be coddled. It creates a feeling of helplessness among corporation counsel. The victimes of juvenile crime, and the public think that nothing will be done to kids that don't obey the law. (Corporation Counsel)

Conversely, their shared commitment to legal procedure is illustrated by the next two quotes.

> We have guaranteed the juvenile his/her due process rights. These rights are observed during the fact-finding hearing. Due process is needed to determine whether the child who is adjudicated is the right child; the knowledge of the behaviorial scientist can be drawn upon during the dispositional phase. (Public Testimony, Director of Legal Aid Society Juvenile Division)

> I think there is very little difference in the way we handle delinquents and the criminal court deals with adult offenders. Almost the same procedures apply except, a juvenile can be held because he/she might commit another act. There's no deviation in due process, except for bail. (Corporation Counsel)

> At disposition there is a deviation from the legal framework. Then the judge becomes burdened with the problems of arranging placement or working out other plans for the child's care. During this stage of the process, the judge is expected to manage the court's schizophrenic interest in both treatment and punishment. The court just can't provide both services at the same time. We're in an impossible position. Our decisions will invariably result in our bitterly disappointing somebody. (Judge)

Theoretical Factors Affecting Court Process

Aside from legal procedure, the decision making of court personnel is affected by two other perspectives. The first of these is principally concerned with protecting the community from potentially destructive actions of the PINS or delinquent youngster and attempts to control the delinquent's behavior, particularly through detention or placement. The second perspective

views delinquency as a disorder that can be cured, and consequently is intended to treat and rehabilitate, rather than to control and contain.

These two approaches to the problem of delinquency are underpinned by a number of theories which attempt to explain: 1) the causes of delinquency; 2) the nature of the delinquent's moral character; and 3) the types of service encounters that best will meet the needs of the delinquent and the community. The assumptions of these theoretical frameworks in turn shape the perspectives and goals of the probation, social work, and mental health staff.

Detention and Placement Perspective

The control facilities serving New York City are expected to regulate the behavior of those delinquents who have been declared a clear threat to the community, or temporarily out of control. In the latter instance, the detention center serves as a temporary measure designed to introduce the delinquent to the potential consequences of continued aberrant behavior and law breaking. Those juvenile offenders who continue to engage in various criminal activities after they have experienced a number of treatment programs or who are convicted of committing a designated felony will usually be filtered to the most physically restrictive residential settings.

The factor most clearly associated with the probation recommendation and judicial decision to place a youngster in such a "secure" facility is the threat which the continued freedom of the delinquent presents to the welfare of the community. Aside from their obligation to do so, a secondary

justification for such a placement decision is their conviction that the delinquent will change behavior after this structured institutional experience.

> You just can't continue to put the kids' needs before the community. There's a kid who I handled recently who is up on four petitions and has committed at least sixty separate crimes. The fellow is out on the streets now creating more mayhem. We have just got to get these kids into a setting that is secure. It's pretty clear they're out of control. If we put them in a community setting or send them home, they're just going to hurt somebody. (Administrator for the Probation Department)

> The problem is carrying out the sentences given at disposition. The judges place the kid for eighteen months and the agency should keep him until the end of the sentence, instead of letting him go whenever the agency sees fit. I favor determinate sentences. Kids today are streetwise, and know what they can get away with. But I taught school for three years and know that kids need structure and actually want it. I know that the agencies could help a kid if they kept him for the full length of the sentence. (Supervision Probation Officer)

> A judge should be able to put a kid in Spofford for two weeks as punishment. If a kid is on probation and generally doing O.K., but then messes up, I'd like to see him given a short term or remand and then returned to probation. Now if he messes up, the alternative is placement, and the case may drag on for six months with many adjournments, while we try to find a place. If after a long waiting period the youngster is rejected everywhere, then, he is often just kept on probation because another placement can't be found. (Judge)

> This is part of the reason that the court's a joke to these kids. The only solution is to take a sterner attitude with these kids. I understand that at one time a probation officer could recommend

> placement in a training school if a kid was not cooperative, and it was done. Now the pendulum has swung too far in the other direction. The P.O. used to have more autonomy, but now threatening the kid with a violation of probation and return to court is a joke. (Supervision Probation Officer)
>
> We've got to get tougher with the serious offender. Things are just too lax. A lot of kids are showing really criminal behavior and not being punished. For instance, a kid was charged with attempted murder because he was sniping with a gun from a roof top. He was found guilty of a B felony and sent to Elmira, but appellate court overturned the decision and reduced the offense to assault and a C felony. The kid was brought back to court for resentencing. Probation thought training school would be an appropriate placement, but Legal Aid is pushing for a community-based setting. Meanwhile, the kid is running wild in the streets. (Investigation Probation Officer)

Treatment and Rehabilitation Perspective

A major interpretation of delinquent behavior is that it is prompted by psychological or emotional problems. Various internal stresses and strains are seen as ultimately manifesting themselves through acting-out behavior which is sometimes criminal in nature. Many therapists try to help the delinquent distinguish between internal and external stress and, through treatment, to learn to gain control over his destructive impulses.[1] An implicit assumption of this therapeutic approach is that the delinquent does not have much insight or control over his situation and, therefore, should not be judged too harshly.[2] These concepts have been translated into a number of placement alternatives.

Community-based settings -- either residential or non-residential --

are most frequently used as the primary providers of treatment services. nonresidential settings are the least restrictive placement options available to the delinquent. Residential, community-based settings are generally less restrictive than a "secure" facility, but they assume greater control over the activity of the delinquent than do non-residential programs. The extent to which particular professional groups prefer one or the other of these placement options is illustrated below:

> The kids are on a bell curve. At the one end are the kids who confess, and in the middle are the greater number of kids who deny their act. Kids learn if they hold out they will win. There are also a number of kids who admit to me because they couldn't care less. They have been through the system and know admitting to me won't make any difference. These are kids who are in need of structured treatment. A treatment situation can't be created during sessions. If these kids are going to be helped, they've got to be taken out of their communities. They need to be placed in another milieu and exposed to intensive therapy. (Probation Intake Officer)

> The law guardian will use the social workers' unit. Even though we don't believe it's true, the lawyer will ask us to testify that we believe a kid is better off at home to avoid placement. Some workers think it's unethical and won't do it. Sometimes though, a lawyer will try to pressure a worker into doing it, by saying he'll talk to the worker's supervisor. (Legal Aid Social Worker)

> Legal Aid deals more with probation officers than other agencies. We have frequent conflicts with them over whether a kid should be sent to a residential setting or referred for supportive services. Probation officers couldn't understand the philosophy of law guardians, what they were doing in the system. They don't understand that Legal Aid was protecting rights and not concerned with needs. Once that is understood, you know Legal Aid performs a function, protecting the children's rights. Once

this understanding was achieved, I personally felt less antagonism toward Legal Aid. My orientation changed from "I hate those guys for putting kids back on the street who need help," to "How do I work harmoniously with those guys?" (Probation Intake Officer)

We involve ourselves with kids a lot more than lawyers in the criminal court involve themselves with clients. We intrude on kid's lives. I will try to effect change in a kid's situation that will help him in court. For instance, I try to get youngsters to go to school if they haven't been going and I talk to them about their problems. I even once got a girl into the Girl Scouts. I believe that the social worker function of Legal Aid is necessary. In part what we're doing is providing supportive services and helping the court to keep families intact. (Law Guardian-Legal Aid)

Ideally, I would like to be able to assess the situation objectively to assess the youngster's problems objectively. But in actuality when we go to work on a case, the attorney has already told me what the problem is. We have some leeway, but basically our only options are planning on keeping a youngster home or placing him with a voluntary agency. The lawyer assumes that the juvenile knows what he/she wants. He is an advocate for the child and represents juvenile rights. Whatever the youngster wants, we are expected to fight for. It should come as no surprise, of course, to learn that most youngsters want to stay home. (Legal Aid Social Worker)

In our reports we try to differentiate those kids who need structure from those that are amenable to therapy. Most cases I see are not amenable to traditional psychotherapy. They simply are not sufficiently cooperative or motivated. If these youngsters are to be helped, they must be placed in a residential treatment setting. They are in need of milieu therapy. (Mental Health Services)

Reasons for Greater Influence of Law Guardians

Legal-Aid attorneys (but not 18B panel or private attorneys) have been consistently successful in obtaining favorable outcomes for clients at adjudicatory and dispositional hearings. Legal Aid's influence can be traced to the scope and nature of its responsibilities within the family court. The overwhelming majority of PINS and delinquent cases that pass through the court are in need of a public defender since these youngsters and their families cannot afford a private lawyer. They are generally referred to the contingent of law guardians that serve each of the courts, or, less regularly, are channelled to 18B panel attorneys.

Because of their institutionalized group role, the law guardians have a greater opportunity to influence the decision making of the family court than do either the 18B panel attorneys or private lawyers. The law guardians function as a unit. Their relatively strong performance is a product of the kinds of support traditionally provided by the Legal Aid Society which give the individual law guardian essential information, resources, or strategies to ultimately bolster his case. Such support is not available to either the 18B panel attorney or the private lawyer who do not coalesce about any structure or group ideology, but rather function as independent professionals.

The law guardians' position is further bolstered by the continuity of their organizational experience. They served an extended tour of duty within a single family court. As a result, the law guardians are more

acutely aware than their professional counterparts of the factors which shape family court decision making. This insight has enabled them to manage the court process more effectively.

> Of 582 petitions which were examined over four separate months in the Bronx Court, 327 were dismissed, sixty-two were withdrawn, six were discharged, six were adjourned contemplating dismissal, and as of July 1976, there were twenty-eight open warrants and forty-seven cases still pending. On eight cases, we were unable to determine what action was taken. There were ninety-eight convictions during this period. Of these convictions, many of which were serious felony charges, fifty-five were either placed on probation or institutionalized. (Probation Intake)

> My anguish has been compounded by the awareness that often the court inculcated in youngsters a contempt and scorn for the law, as they are brought before it to have absolutely nothing happen, except their having perhaps learned the lesson that with delay and a state-paid lawyer, they can beat the system. Here are two examples of routine cases:
>
> > Two kids shot another dead in the head. The allegation was reduced to reckless endangerment. Five 15-year-olds kidnapped two girls and raped them repeatedly. The allegations were rape 1 and possession of a deadly weapon. The finding was sexual misconduct, a misdemeanor. This situation is mostly due to judges surrendering their authority to law guardians. (Probation Intake Officer)

> The probation officers just don't have any status in family court. You go into family court and the law guardian has more input during disposition than the probation officer. At least there used to be a kind of bartering in the courtroom over dispositions. Now though it seems that the decisions during disposition are pretty much going any way the lawyers want them to go. (Supervision Probation Officer)

> Legal Aid has been able to have a field day because they run the courtroom. Most judges are indignant, but if they were honest, they d admit it. In any system the one who is best at manipulation does the best. The family court system is such a mess, and Legal Aid attorneys are so bright and ambitious, they come out on top. (Probation Intake Officer)

The specific degree to which these outcome decisions can be attributed to the facts of the case as opposed to the dominant power position of law guardians is not completely clear. However, the law guardians do maintain a decisive edge in power over other court-related actors and the pattern of decision making within the court is more consistent with their professional interests. Both the impressions of various court-related actors and available quantitative data underscore this point.

The law guardians are using the set of circumstances which has vaulted them to a strong position within the courts in a manner which is both professionally acceptable and appropriate and which expresses their professional commitments. Their primary obligation is to function as effectively as possible in behalf of their clients. Within this context the law guardians have attempted to both directly and indirectly manage the decision making of the family court. The following section will discuss the circumstances which have increased both their leverage and influence.

Inability to Maintain a Balance of Power Within the Court

The fact finding and dispositional phases of the family court hearing have traditionally served as a forum for the competing interests of the prosecutor and defense lawyer. However, in order for this adversarial model to serve both the target community and the defendant, each group must be provided with the resources and authority necessary to maintain a relatively balanced power relationship. If one or the other is consistently able to marshal greater support, then the adversarial process deteriorates. The competition between these groups will be consistently undermined by either the prosecutor or defense counsel's superior position. In general, these group battles will only serve the function of fulfilling a courtroom ritual. This symbolic performance may take any one of a number of forms. Whatever their significance, the outcome of these battles will consistently further the interests of the more powerful group.

Strengths of the Law Guardian

The law guardians are clearly in a dominant position during the first stage of the hearing. They maintain a legal staff approximately twice the size of the corporation counsel's. In addition, the law guardians have been provided with the resources necessary to hire a larger contingent of clerical staff. (See Appendix II.) This differential in manpower can be traced to the difference in funding sources and functions of the two groups. The law guardian's work is underwritten by state and federal grants, while the corporation counsel's funding base is tied to the fiscal policies of New York

City. As described in earlier chapters, recent changes in the family court placed substantial emphasis on expanding the role of defense counsel. While far less attention was directed toward either defining or underwriting the role of the state's attorney.

Weaknesses of Corporation Counsel

The corporation counsel's smaller work force has handicapped his efforts to compete effectively with the law guardians. Furthermore, since corporation counsel is not assigned to a particular case, but rather to a part of the court, and since cases may be assigned or re-assigned to a part on the day of the hearing, the corporation counsel's capacity to prepare a case is limited. Even when corporation counsel are aware that particular cases have been assigned to their part, they are still at a disadvantage relative to the law guardians because of their relatively small staff. In effect, they are expected to provide the same quality of service to approximately the same number of cases as the law guardians, using half the staff.

The corporation counsel's staff shortage has contributed to the number of adjournments. Corporation counsel does not have the resources necessary to: 1) persuade various actors associated with a case to appear in court on a prearranged date; 2) collect and organize the materials associated with a case prior to the hearing; and 3) enforce subpoenas. If a case is regularly adjourned for one or more of these reasons, the

charges will ultimately be dismissed or withdrawn, an outcome conforming more with the interests of the law guardians and their clients. The results of the corporation counsel's staff shortage are illustrated below:

> In great part, our shortages reduce the chances that a case will be heard. Here's an example of how the corporation counsel's staff shortages affect the court. There was a case of a pocketbook snatch. The first time the girl doesn't appear, the case is adjourned. The second time, everyone is present, but the cop doesn't come back to court after lunch. The third and fourth time, particular witnesses don't appear. The time after that, the complainant doesn't show and the case is dismissed. The father lost four days of work, and the complainant lost the same. I may be ready, but I don't mind these adjournments because I know the case will be dismissed. What it really comes down to is that the corporation counsel are at a disadvantage. They really don't have the staff to do their job. The corporation counsel can't stay on top of these people to get them into court. Also they frequently can't prepare the case by the date of hearing. All of this adds up to adjournments and finally dismissals. (Law Guardian-Legal Aid)

> The corporation counsel who is in intake may not handle the case when it gets to a part. If the case is then adjourned, a third corporation counsel may handle the case on the adjourned date. This is because each corporation counsel is assigned to a particular part on a given day. They handle whatever comes into that part. All of this though further discourages the complainant from showing up. They would prefer to have one lawyer handling their case. (Investigation Probation Officer)

> To expect the corporation counsel to perform their function without the help of research aides, secretaries, and other personnel is unfair. Law guardians have access to these services. Corporation counsel have an impossible task, they must have more personnel. In this court there are twice as many law guardians as corporation counsel. The corporation counsel don't follow through on their cases. The cases they handle each day depend upon the part they're in. I can't see how they do it, there is no continuity. They also don't have an investigation. Sometimes they won't see their witnesses until ten minutes before the hearing whereas I see my client right after arraignment. I'll see the respondent at least once before the hearing, more if possible. (Law Guardian-Legal Aid)

> We are all familiar with the kind of activity that goes on in this court (Family Court) and to expect the prosecutor to perform his function properly without the aid of investigators, clerical help, research people, becomes an impossible task. It's not fair, really to expect them (the corporation counsel) to carry on more efficiently with the caseloads they have and with the lack of personnel. If the community is serious about having to present fully the petitioners' case, then I think it (the community) should look to adequate personnel. (Charles Schnitsky - Attorney in charge of the New York City Legal Aid Society, stated in hearings before the Temporary State Commission on Child Welfare, June 17, 1976)

The corporation counsel is also functionally in a disadvantageous position relative to the law guardian since his role is not precisely delineated in the Family Court Act for either PINS or delinquency proceedings. The corporation counsel is not the official representative of either the state or the complainant. Presumably, the ambiguity of this role has been shaped by a belief among policymakers that in the family court corporation counsel does not require the resources necessary to perform traditional prosecutorial functions.

The ramifications of this are manifold since only a small minority of PINS petitions are presented by a state attorney. Additionally, those corporation counsel who are assigned to PINS and delinquency cases usually do not represent the complainant's interests during the dispositional hearing. It is corporation counsel's feeling that to do so would represent an inefficient deployment of scarce resources which they would rather expend on the adjudicatory hearing. The law guardians, however, are highly involved and quite influential during the dispositional hearing.

The corporation counsel also has not been provided with the resources or police force necessary to enforce a subpoena. Although they can issue subpoenas to various witnesses, they are invariably unable to guarantee that a party will appear in court. The district attorney, however, has the power to enforce subpoenas.

The corporation counsel's capacity to achieve a competitive balance with defense counsel is further diminished by his obligation to proceed with a case. Since his presentation must be made prior to that of the law guardian, even if both are unable to proceed, it is the state's attorney who must ask for an adjournment. Conversely, the non-appearance or unpreparedness of the law guardians, and witnesses frequently is masked by the corporation counsel's responsibility to initiate the adversarial process. After a series of such adjournments the complainant's charges will invariably be withdrawn or dismissed.

We don't have the burden of going forward like the corporation counsel, they move first. If we're both not ready, the judge will only know they're not ready. When I talk about us not being ready, I mean we could probably go forward if the respondent was present. We could cross-examine. In the rudimentary sense, we're ready, but not as ready as we might be ideally with all the needed time and resources. (Law Guardian-Legal Aid)

The corporation counsels' role is prosecutorial in its technical aspects, but we are frustrated in doing our job because we don't follow a case through to the end. For instance, recently I tried the case of a boy who broke into a house and raped a girl. I don't know what happened to him after the finding. He was found delinquent, but we do not attend all dispositional hearings. Now we're entitled to attend dispositions on A and B felonies. (Corporation Counsel)

In theory, there is no difference in subpoena power between the criminal and family courts. The reality, though, is that there is a big difference. The district attorneys have the resources to enforce their petition. They have officers of the law that are expected to serve their subpoenas. The corporation counsel don't have anyone to serve their subpoenas. They mail out their subpoenas and that is technically improper. (Law Guardian-Legal Aid)

No one will call the corporation counsel a prosecutor, although we give him/her most of the responsibilities. Look at the Family Court Act, none of the designations of a criminal trial are used. By law, the law guardian has the power to do things and the corporation counsel can't do anything about it. The corporation counsel presents the petition, but does not represent a complainant. On the other hand, the law guardian does represent the defendant. We've just got to make up our minds about the function of the corporation counsel. (Corporation Counsel)

Surely better solutions can be found (for PINS cases) than the current arrangement which pits the petitioner (usually the mother by herself) against the Legal Aid attorney representing the child) in a lopsided adversarial relationship. How can legal

> truth, a prime objective of our adversarial system, be expected to emerge from a court contest between such unequal opponents (Herman Piven, A Study of PINS, pg. 113)

Advantage of Law Guardian in Placement Decisions

The law guardian's relatively clear role and resource advantage also enable him to influence the placement decisions of the court. Public defenders are actively involved during dispositional hearings, and can, if they disagree with the recommendation of the probation officer, present an alternative plan. A placement strategy is developed, usually by the social work staff of the unit, who are responsible for locating and recommending those placement options preferred by the law guardian and the client. In general, Legal Aid Society workers attempt to identify the least restrictive available program. If the law guardian and probation officer are in sharp disagreement concerning placement, the social worker will make an appearance during the dispositional phase of the hearing, and deliver testimony on behalf of the client. In effect, the Legal Aid social worker's efforts prior to and during the dispositional hearing frequently serve as a countervailing force to the probation officer's traditional and influential advisory role.

The law guardians usually will intensify their efforts during the dispositional hearing if the probation officer recommends a Title III placement, the most restrictive placement option available to the court. The law guardian will request that the probation officer defend the necessity and appropriateness of such a recommendation and invariably develops a line

of questioning that is intended to discredit the plan. The state's counter efforts against the law guardian are usually muted by the probation officer's lack of access to equivalent representation -- a lack which serves to bolster the position of the defense counsel relative to the state's.

The law guardians' efforts to influence placement decision making also have affected the length of dispositional hearings. Their attempts to independently match specific programs with particular types of juveniles result in delays partly because they frequently request that the probation officer investigate the possibility of placement with highly selective agencies. This obligation of the law guardian to secure the least restrictive placement can significantly increase the amount of time devoted to a dispositional hearing and also results in a frequently futile and unproductive placement exercise for the probation officer.

This process of rejection and delay, however, can benefit the law guardians' clients, since it wears down potential and real adversaries in the judicial and placement process. The urgency associated with specific kinds of placements fades for the youngster who remains in the community during this period of delay, and who is not returned to court on additional petitions. If the court's machinery fails to make the preferred match, then the youngster is frequently channelled to a supervisory probation officer whose supervisory and counseling services are, however, more symbolic than real, representing as they do the court's last and overburdened line of defense.

If there was an attorney available to probation officers during the dispositional hearing, I would use him. They're just not going to be available to us though, in the dispositional hearing. Nobody though seems to recognize our need for counsel. For instance, a Title III recommendation at the dispositional hearing gets involved in questions of opinion. Unless you know how to phrase things, you will get into trouble because the law guardians will attack on any one of a number of points. (Investigation Probation Officer)

If the probation officer is sworn in, he/she needs counsel. Otherwise, who will ask questions and elicit information that will support the probation officer's recommendation? When you are on the witness stand, you can only answer the questions you are asked and not volunteer anything. The judge sometimes offers to act as the probation officer's attorney, but how can he play both roles? (Supervision Probation Officer)

If the administrators of the probation department backed up the officers, we could do battle with the law guardians. They can cross-examine us at the dispositional hearing and we are put on the defensive because we are not lawyers and are ill-equipped to stand up against the law guardians on purely legal issues with no departmental attorney or corporation counsel present. Most probation officers want to avoid crossing swords with the law guardians in the courtroom because it's a rough experience and not worth the hassles. Even if it is obvious that the kid is a monster, we will often give in to the law guardian's demands. (Supervision Probation Officer)

I don't look at a case objectively. If a kid has been in on four delinquency petitions, I'll still fight for him to go home. I'd rather see a kid stay home and get in trouble than go to particular types of facilities. For instance, there is no way I'm going to let a kid go to a Title III facility without a fight. That, of course, is frequently the recommendation of probation, so then it becomes our job to prove that better options are available. (Legal Aid Social Worker)

> Most lawyers see us as a direct service. Some know we can be effective talking to families to get them to change their minds and to withdraw petitions. Some families may even withdraw the petition the same day if we can get to them right away. Our main thrust at Legal Aid is to get the kid out of the court's jurisdiction; ideally, we try to keep the kid at home and place him/her in a non-residential program. (Legal Aid Social Worker)

> It is a tremendous chore to place kids. If the search goes on long enough, a case may be dismissed if the kid is staying out of trouble. (Court Liaison Officer)

> A Legal Aid social worker can help the law guardian to defend a case in a kind of negative way. They may get the kid into a non-residential community program. Some of these programs are worthless. After a number of adjournments, the law guardian can use this to show how well the client is adjusting in the community, and get the case dismissed. (Administrator for the Probation Department)

> Most of the law guardian's objections to probation's recommendations come at the dispositional hearing. If, according to its best judgement, probation recommends placement with DFY, a law guardian may demand exploration of a private agency's resources as a delaying tactic, even though probation has determined that the youngster is not acceptable to a private agency. The delay may ultimately result in a dismissal. The law guardians, of course, see that as a good thing, because they are primarily interested in getting the kid off. (Investigation Probation Officer)

Effect on Judges

It has been suggested by various professionals that the judge's decision making during the dispositional hearing is affected by the threat of appeal. A subdivision of the Legal Aid unit exclusively concerned with appealing particular judicial decisions will develop writs when the judge's

disposition appears to be based on faulty legal reasoning or prescribes a relatively restrictive interventive strategy. The judicial disposition which most frequently sets the appeals process in motion is a Title III placement since it is among the most restrictive placements available and the public agency which administers these programs (DFY) cannot overturn a judicial disposition. The law guardians will therefore appeal.

The right of appeal provides the lawyer with the capacity to challenge the decision making of the judge. At the very least, an appeal will result in the judicial review of a judge's finding which may then be overturned by a higher court. Such an outcome rebukes the decision making of the lower court judge and, if his decision making is frequently appealed or overturned, his reputation will invariably suffer.

Therefore, there is a stigma attached to the review process. If a judge's decisions are consistently challenged or overturned, then questions concerning competence may be raised by the legal community. Further, the appeals process requires a diversion of resources from other court-related matters. If a judge's decisions are consistently appealed, costs spiral and such occurances are inevitably brought to the attention of administrators responsible for managing the scarce resources available to the court. Together these forces may lead a judge in his decision making to minimize the risk of an appeal.

We see then that the decision making tools now used in the family court represent a compromise between the court's traditional interest

in determining the needs of the child and the emergent body of juvenile law which dictates that specific procedural safeguards be enforced by the judiciary. The legal underpinning of the family court is presently fragmented and highly fluid. Legal vagaries and historical interests within the family court have placed the judge in a highly vulnerable position. Decisions can be challenged by law guardians who 1) maintain dissimilar interpretations of relatively obscure laws; 2) wish to establish a legal precedent; 3) intend to clarify the meaning of prior judicial decisions; or 4) refuse to recognize the distinctly nonlegal commitments of the family court. This situation in turn dictates that the upper court judges are then confronted with and base their decisions upon the relatively soft and shifting decision making base of the family court. A number of court-related professionals have suggested that this set of circumstances has tended to intimidate the judge.

> The vagueness of the family court law produces appeals. Right now, because everything is so unclear, it's a wild free-for-all. The lawyers are looking for particular kinds of rulings. When the judge goes the other way, they can use the appeal to produce a different kind of ruling at a higher court. The vagueness of the law, of course, gives the law guardian an opportunity to appeal a great variety of cases. For instance, Legal Aid will frequently appeal Title III placements. They stress the child's rights to treatment, and question whether he will receive the treatment he needs in Title III. Can the law, though, consistently apply particular standards to determine what type and how much treatment is necessary treatment? I don't think those kinds of questions can be definitively answered by any professional group. So, of course, when they're brought before a court of law, it ultimately comes down to whether or not the judge is persuaded by the lawyer's clear arguments on vague laws. (Corporation Counsel)

> We don't see the results of appeals. I know, though, that the judges are careful when they're dealing with an area of the law that is cloudy. All judges are protective of their record. (Corporation Counsel)
>
> Many judges are intimidated by Legal Aid, because they're afraid their decisions will be appealed. Legal Aid has a very pervasive influence on a judge's decisions in family court. Some are so timid and fearful they don't want their names connected with an appeal regardless of the result. (Court Liaison Officer)

Conclusion

Each of the forces that has been identified in this chapter has either actively counteracted or served as a source of inertia which impedes the family court's decision making process. The unbalanced power relationship between specific groups of court related actors has contributed to the delay and termination of hearings. The state's or court's capacity to render swift judgement and enforce its perspective has been undermined by its relatively weak power position.

CHAPTER V

The interviews with court personnel reported in Chapter IV indicate that defense counsel, or more specifically the public defender, play a dominant role in the family court. Law guardians who advocate aggressively and effectively in behalf of their clients were credited (or blamed) for the high incidence of delay and dismissal experienced in the family court in recent years. The public defender's apparent successes were attributed to their greater resources and organizational strength relative to the prosecutor. The following analysis will draw upon the tracking data described in Chapter I to examine systematically the implications of patterns of legal representation for the handling of a large number of cases.

Detailed data were collected on the cases as they moved through the court. For analytic purposes a distinction is made here between outcome and strategic variables. The following are treated as outcome variables:

1. Adjudicatory detention: The temporary detention of the defendant prior to the completion of the fact-finding hearing.
2. Adjudicatory disposition: A determination by the court to sustain or dismiss a petition.
3. Final disposition: A determination by the court following a finding to place the defendant in a residential agency or maintain him or her in the community.

The following process variables of potential strategic importance to counsel were measured:

1. Adjudicatory adjournment: A rescheduling of the fact-finding hearing subsequent to the initial appearance of the principal parties.
2. Adjudicatory dismissal: Specific action or inaction by counsel which contributes to a dismissal.

Adjournments are treated as of strategic importance here because they can lead to premature dismissal. An adjudicatory dismissal is strategically important, of course, because it precludes the possibility of a delinquency or PINS finding.

Finally, it should be noted that the adjudicatory detention variable can be defined as an outcome or as a strategic objective. It can be a hybrid variable. For the youngster who remains in detention for months, detention is as much an outcome as certain types of placement. Alternately, brief periods of detention or the deliberation associated with such a process may function as part of counsel's overall strategy. For the purposes of this analysis, detention decision making has been defined as an outcome variable because of its impact, however temporary, on the life circumstances of troubled youth.

The following analysis will compare defense counsel in Brooklyn and the Bronx on specific outcome and strategic objective variables. The same variables then will be used to evaluate the prosecutorial experience of the corporation counsel and district attorney. The final section of the chapter will assess the effect of counsel on PINS proceedings.

Specification of Outcome Variables

For clarity in understanding the findings contained in the tables which follow, note that Tables I - VI reflect the objectives of the state or of the defense counsel. An indicator of success (criterion variable) has been established for each of the strategic and outcome objectives. Various findings from earlier sections of the study were used to specify some criterion variables. For example, the suggestion that delay undermines the prosecutor's capacity to sustain a case has been translated into a criterion variable which establishes two or fewer adjournments as a positive indicator for the prosecutor and more than two adjournments as a positive indicator for defense counsel. Since defendants are presumed to prefer a dismissal and avoidance of a decision to detain or place, while the corporation counsel (C.C.) or district attorney (D.A.) typically advocates in behalf of a detention or placement decision, criterion variables are defined in this way. Finally, the adjudicatory dismissal variable, which is concerned with cases that are dismissed as a result of either defense related initiatives or prosecutorial failure, will be operationalized for defense counsel on the basis of their

capacity to have a case adjourned contemplating a dismissal, or terminated due to insufficient evidence. Finally, since the prosecutor seeks to sustain a petition by avoiding dismissal based on: a complainant's nonappearance or decision to withdraw the petition; a police officer's unavailability; or unspecified failures to prosecute, Tables I - VI have been constructed to reflect the substantive differences in objectives between the defense counsel and prosecutor.

The data in Tables I - VIII are a cumulative representation of counsels' effect upon a proceeding. Calculations are based on a constant sample of youngsters accused of specific offenses. The only exception to this involves the placement variable, where both an incremental and cumulative measure of placement are included in the analysis. Since the incremental measure of this outcome is based upon those cases which were adjudicated, in effect this sample is comprised of those cases which progressed to the second or dispositional stage of the hearing.

There was some frustration associated with the analysis of placement, since the statistical testing and discussion of this outcome variable were limited by the very small number of youths who either were referred or committed to a residential facility.

Comparison of Types of Defense Attorneys

Table I compares the strategic objectives and outcomes of the panel attorney with the Legal Aid Society's counsel (law guardians) for first

TABLE I

Outcomes of Defense Attorneys in the Bronx:
Panel Attorneys and Law Guardians
for Caseloads Comprised of 1st and 2nd Delinquent Offenders

STAGE - Variable	CRITERION	DEFENSE COUNSEL TYPE LAW GUARDIAN	PANEL ATTORNEY	N LG	PA	P
		(percentages)		(total number of cases)		(probability)
Adjudicatory Adjournment	one or more adjournments	37	15	93	86	.001
Adjudicatory Detention	not detained	94	81	93	86	.001
Adjudicatory Disposition	dismissed	75	59	93	86	.01
Adjudicatory Dismissal Reasons	dismissed because of apparent defense-related initiatives	39	31	93	86	
Dispositional Disposition (cumulative)	avoid placement	93	88	93	86	
Dispositional Disposition (incremental)	avoid placement	70	60	23	25	

and second delinquent offenders in the Bronx. The data indicate that more (37%) of the law guardian cases than of the petitions handled by the panel attorney (15%) required two or more appearances, a difference significant at the .001 level. The data also show that while 91% of the Legal Aid Society clients avoided detention, fewer (81%) of the delinquents defended by a panel attorney were not detained during the adjudicatory hearing. This difference also is significant at the level of .001. The adjudicatory disposition variable offers more evidence of significant outcome differences between these attorneys. In 75% of the cases represented by the law guardian, compared to 59% of the cases defended by the panel attorney, the charges were dismissed. This finding is significant at the .01 level. There was, however, little difference (39% vs. 31%) between these attorneys on the adjudicatory dismissal variable.

The cumulative data show that 93% of the Legal Aid Society's compared to 88% of the panel attorneys' clients avoided placement. In effect, a defendant who is represented by a panel attorney is twice as likely as a delinquent defended by the Legal Aid Society to be placed. The rate of nonplacement for youngsters adjudicated delinquent -- incremental nonplacement -- is 60% for the panel attorney and 70% for the law guardian.

The data in Table I strongly confirm expected differences between the Bronx court's panel attorneys and law guardians, differences consistent with the hypothesis that the latter is the defense attorney more likely to affect the process and outcome of a hearing in a manner favorable to the defendant.

In Table II outcomes and strategic objectives associated with private attorney and law guardian caseloads in the Brooklyn court are compared. Here the data do not show significant differences in outcome between the cases defended by the private attorney and the Public Defender or law guardian. There is no difference in certain criterion variables. Approximately one fourth of the cases represented by each type of attorney exceeded two adjournments, and the incidence of detention and placement for the clients of each type of defense counsel is similar. There is some difference, in the expected direction, on two other variables. Fifty-three percent of the public defenders' compared to 41% of the private attorneys' caseloads were dismissed because of defense-related initiatives. Also the data show a dismissal rate of 85% for the law guardian compared to 74% for the private attorney. These differences are not statistically significant.

Taking the results of the analyses in both courts, we see that this study's findings differ from those of prior investigations. The juvenile justice literature has consistently held that private attorneys score significantly higher on outcome indices than do public defenders. In the current study, however, public defenders tended to be more effective than private attorneys.

TABLE II

Outcomes of Defense Attorneys in Brooklyn:
Private Attorneys and Law Guardians
for Caseloads Comprised of First Delinquent Offenders

STAGE - Variable	CRITERION	DEFENSE COUNSEL TYPE LAW GUARDIAN	PRIV. ATTORNEY	N LG	N PA	P
		(percentages)				
Adjudicatory Adjournment	one or more adjournments	23	24	82	34	
Adjudicatory Detention	not detained	98	100	82	34	
Adjudicatory Disposition	dismissed	85	74	81	34	0.15
Adjudicatory Dismissal Reasons	dismissed because of apparent defense related initiatives	54	41	82	34	
Dispositional Disposition (cumulative)	avoid placement	99	100	81	34	
Dispositional Disposition (incremental)	avoid placement	94	100	16	9	

Comparisons of Types of Prosecutors

The data in Tables III - VI compare prosecutors on the basis of outcome and strategic objective criteria for distinct caseloads in the Bronx and Brooklyn. The distinctive character of these subsamples reflect the mutually exclusive composition of each prosecutor's caseload. The sample from delinquent youth assigned to the assistant district attorney is comprised of first offenders who allegedly committed one of the following offenses: robbery first degree; assault first degree; arson first degree; or arson second degree. This population's experience in the family court is compared with several fairly similar samples of youth prosecuted by the corporation counsel. The first comparison group includes alleged first offenders accused of offenses one degree less serious than the assistant district attorney's caseload (i.e., cases that involve a primary charge of robbery second degree, assault second degree, or arson second degree and third degree). The second comparison group is comprised of youths who are returning to court on a second or third petition for a range of charges.

In effect, the district attorney's office maintains primary and generally exclusive responsibility for prosecuting petitions that alleged certain categories of crime against property or a person. In order to compare these prosecutors on specific outcome measures, a similar grouping of alleged delinquents had to be assigned to the corporation counsel and comparison groups were developed. While it is expected that the difference of one degree in the offenses prosecuted by these state attorneys will affect certain kinds

TABLE III

Outcomes of Prosecutors in Brooklyn:
District Attorney and Corporation Counsel
on Charges of Similar Severity*

STAGE - Variable	CRITERION	PROSECUTOR TYPE D.A. (percentage)	PROSECUTOR TYPE C.C. (percentage)	N D.A.	N C.C.	P
Adjudicatory Adjournment	Two or fewer adjournments	64	81	28	37	0.12
Adjudicatory Detention	detained	00	03	28	37	
Adjudicatory Disposition	adjudicated delinquent	79	24	24	37	.0001
Adjudicatory Dismissal	avoidance of prosecutorial failure	86	57	28	37	.04
Dispositional Disposition (cumulative)	placed	13	00	24	37	.05
Dispositional Disposition (incremental)	placed	16	00	19	9	

*D.A. caseload is comprised of first offenders of robbery 1^{o}, assault 1^{o}, arson 1^{o} and arson 2^{o}.

Corporation counsel caseload is comprised of first offenders accused of robbery 2^{o}, arson 3^{o}, and arson 4^{o}.

of decision making, it is assumed that this slight difference in charge will contribute to only marginal differences in outcome. Therefore, if the difference between these sets of data achieves statistical significance, attributing these differences to prosecutorial effect seems reasonable in spite of slight differences in the samples.

The other sample, of second and third offenders, provides a more equivalent comparison group, since a recidivist returning to court on a second or third petition is seen as posing as serious a threat to the community as a first offender accused of first degree offenses. The potentially less serious nature of a delinquent act is more than offset by repeated delinquent activity. Alternatively, the more serious offense committed by a first offender is frequently viewed by the court as aberrant, depending upon the circumstances. Therefore, the recidivist's most recent petition may be viewed as more problematic than a relatively serious offender's initial delinquent act.

Brooklyn first offenders whose acts are defined as one degree of seriousness are compared in Table III. Eighty-one percent of the district attorneys' cases compared to 24% of the corporation counsels' cases were adjudicated delinquent, a significant difference. Also significantly different, 86% of the district attorneys' versus 57% of the corporation counsels' petitions were not dismissed because of a failure to prosecute. (The district attorneys' decisive edge here cannot be attributed simply to the number of court appearances associated with a case. His cases required two or fewer

appearances two-thirds of the time, while more than 80% of the corporation counsels' cases were restricted to two or fewer appearances.) Finally and also statistically significant, 13% of the cumulative petitions prosecuted by the district attorney resulted either in referral or committment to a residential facility, while none of the delinquents prosecuted by the corporation counsel were placed. The incremental incidence of placement approximated the cumulative findings for both types of prosecutors and were greater for the district attorneys.

In Table IV the types of cases prosecuted by the Brooklyn corporation counsel have been changed to the previously specified delinquents who return to court on second and third petitions, while the sample of first degree offenders assigned to the district attorneys' remains the same. This comparison shows better scores for corporation counsel on some outcome and strategic measures, such as the number of cases adjudicated delinquent. However, the difference between the district attorney and corporation counsel on this outcome measure still was statistically significant and, while the cumulative placement rate of delinquent youth prosecuted by the corporation counsel increased from .00% to .07% (from Table III to Table IV), cases prosecuted by the district attorney were still twice as likely to be placed. The incremental placement rate of cases prosecuted by the district attorney and corporation counsel were now quite similar in this comparison, with 18% of the delinquents convicted by the corporation counsel and 16% of the offenders convicted by the district attorney ultimately placed. Additionally,

TABLE IV

Outcomes of Prosecutors in Brooklyn:
District Attorney and Corporation Counsel
on an Offense of Similar Severity*

STAGE - Variable		PROSECUTOR TYPE D.A.	C.C.	N D.A.	C.C.	P
		(percentages)				
Adjudicatory Adjournment	Two or fewer adjournments	64	61	28	41	
Adjudicatory Detention	detained	00	17	28	41	.02
Adjudicatory Disposition	adjudicated delinquent	79	45	24	38	.007
Adjudicatory Dismissal	avoidance of prosecutorial failure	86	73	28	41	0.13
Dispositional Disposition (cumulative)	placed	13	7	24	41	
Dispositional Disposition (incremental)	placed	16	18	19	17	

*D.A. caseload is comprised of first offenders accused of robbery 1^{o}, assault 1^{o}, arson 1^{o} and arson 2^{o}.

Corporation counsel caseload is comprised of second and third offenders.

the degree to which the corporation counsel was able to avoid a dismissal because of a failure to prosecute grew from 57% of their caseload in Table III to 73% in Table IV so the difference is not significant here. Corporation counsel also increased (to 73%), avoiding a dismissal because of a failure to prosecute. In spite of these performance improvements of corporation counsel between Table III and IV data, all but one of the variables still show the district attorney as more effective. The exception is that petitions prosecuted by the corporation counsel resulted in a detention decision 17% of the time compared to only 4% of the cases prosecuted by the district attorney (a significant outcome).

The data in Table V also show substantial differences in outcome for the district attorney and corporation counsel in the Bronx. This table compared offenses that differed by one degree of seriousness for a caseload of first offenders. Seventy percent of the district attorney's compared to 30% of the corporation counsel's cases were adjudicated delinquent, a significant finding. Similarly, the district attorney was 100% effective and the corporation counsel only 85% so in avoiding a case dismissal because of a failure to prosecute (significant at the .0001 level). Further, the cumulative placement rate for the cases prosecuted by the district attorney is 28% compared to 10% for the corporation counsel, which is also a significant difference. As with other data, there is little difference in the incremental placement rates of cases prosecuted by the district attorney and corporation counsel, with approximately one-third of both dispositional

TABLE V

Outcomes of Prosecutors in the Bronx:
District Attorney and Corporation Counsel
on Charges of Similar Severity*

STAGE - Variable	CRITERION	PROSECUTOR TYPE D.A.	C.C.	N D.A.	C.C.	P
		(percentages)				
Adjudicatory Adjournment	Two or fewer adjournments	67	70	45	40	0.4
Adjudicatory Detention	detained	18	10	45	40	
Adjudicatory Disposition	adjudicated delinquent	70	30	45	40	.0003
Adjudicatory Dismissal	avoidance of prosecutorial failure	100	85	45	40	.0001
Dispositional Disposition (cumulative)	placed	28	10	41	40	.04
Dispositional Disposition (incremental)	placed	31	33	32	12	

*D.A. caseload is comprised of first offenders accused of robbery 1^{o}, assault 1^{o} and arson 2^{o}

Corporation counsel caseload is comprised of first offenders accused of robbery 2^{o}, assault 2^{o}, arson 3^{o} and arson 4^{o}.

caseloads placed. Finally, 18% of the cases assigned to the district attorney were detained compared to 10% for the corporation counsel.

In Table VI slight differences in types of offenders did not substantially improve the scores achieved by the corporation counsel. The number of cases adjudicated delinquent for corporation counsel only increased from 30% to 37% and the difference from the district attorney's 70% rate remained statistically significant. The proportion of cases that eluded a dismissal because of the corporation counsel's failure to prosecute dropped from 85% to 68%, but the spread between this and the district attorney's (100%) petitions on this criterion variable is still significant (at the .0001 level). The cumulative placement rate of petitions presented by the corporation counsel increased from 10% to 14%, but the incidence of placement was twice as high for cases prosecuted by the district attorney. The incremental placement rate remained about the same. Finally, the number of youngsters detained in a hearing where the state's interests were represented by the corporation counsel grew to 14% almost eliminating the difference between the district attorney and corporation counsel in cases detained by the court.

The data presented in Tables III - VI are consistent with the hypothesis that that type of counsel has a differential effect upon the process and outcome associated with delinquency hearings. Almost without exception they confirm that cases prosecuted by the district attorney were more likely to result in convictions than those petitions which were presented by the corporation

TABLE VI

Outcomes of Prosecutors in the Bronx:
District Attorney and Corporation Counsel
on Charges of Similar Severity*

STAGE - Variable	CRITERION	PROSECUTOR TYPE D.A.	C.C.	N D.A.	C.C.	P
		(percentages)				
Adjudicatory Adjournment	Two or fewer adjournments	67	61	45	57	.50
Adjudicatory Detention	detained	18	14	45	57	
Adjudicatory Disposition	adjudicated delinquent	70	37	45	57	.002
Adjudicatory Dismissal	avoidance of prosecutorial failure	100	68	45	57	.0001
Dispositional Disposition (cumulative)	placed	28	14	41	57	
Dispositional Disposition (incremental)	placed	31	38	32	21	

*D.A. caseload is comprised of first offenders accused of robbery 1^{o}, assault 1^{o}, arson 1^{o} and arson 2^{o}.

Corporation counsel caseload is comprised of second and third offenders.

counsel. A number of the differences in the outcome measures -- adjudicated delinquent, dismissed because of a failure to prosecute, and cumulative placement rate -- were statistically significant.

Summary of Differences, Tables I to VI

In sum, the data in Tables I - VI indicate that counsel has a pronounced effect upon delinquency proceedings. The findings generally support the contention that the defense counsel of the Legal Aid Society's Juvenile Division and the assistant district attorney are especially able representatives for the respondent and petitioner. The public defender was compared with the panel attorney and private lawyer as were the assistant district attorney and corporation counsel. The differences between these attorney types were almost without exception in the predicted direction. It can be assumed, then, that depending upon the type of counsel, a greater or lesser number of delinquency petitions will result in adjudication and placement.

A less clear pattern was shown in data on outcomes of dispositional hearings. The data suggest that type of counsel creates substantial and sometimes significant statistical differences in the cumulative rate of placement. There is, however, very little difference between these types of attorneys on incremental measures of placement. These different findings suggest that the cumulative measures of placement may be an artifact, inasmuch as they are highly intertwined with earlier outcomes -- most notably the court's decision to adjudicate a youth delinquent or dismiss the case. It may reasonably be suggested that if there are substantial differences in dismissal

rates between particular types of attorneys, this disparity will be reflected in the cumulative placement rate. Alternatively, an index -- the incremental rate -- that is exclusively based upon cases which reach the dispositional hearing, offers an independent test of placement.

Also, this study's incremental measure suggests that there is little if any difference between attorney types on the outcome variable placement. This is an unexpected outcome given the substantial discrepancies which existed during the adjudicatory hearing. This finding, however, is consistent with the literature's contention that the procedural or legal guidelines which were developed in the area of juvenile justice focused on the adjudicatory hearing. Alternatively, the dispositional hearing received scant attention from the higher courts, governmental commissions, or state legislatures. Such a finding may therefore simply illustrate the marginal role of counsel during the dispositional proceeding. The similar outcomes experienced by various attorney types on this placement variable also lends credibility to the argument that the judiciary maintains an enlarged function and has increased discretionary authority during this second stage of the hearing.

This increased role of the judiciary during the dispositional hearing does not, however, dilute this study's findings regarding the adjudicatory proceeding. The interest of defense counsel is in steering clients away from a proceeding which minimizes their function and vests much discretionary authority with the judiciary. Consequently, their attention is focused upon

the adjudicatory hearing, and their primary concern is to avoid an adjudication. Their ultimate success or failure during the first stage of the hearing will greatly affect the judiciary's capacity to intervene. The same set of principles also apply to the prosecutor, since the state attorney's ability to avoid dismissals or gain convictions will ultimately determine whether or not the court has an opportunity to exercise its dispositional authority.

The Person in Need of Service (PINS)

This section of the chapter examines the effect of counsel upon PINS proceedings. The lack of variation in types of defense counsel severely limited the utility of such an analysis. PINS cases were almost without exception assigned only to a Legal Aid Society attorney.

Furthermore, most of the PINS cases in the family court were not assigned to a prosecutor. The complainant was generally expected to present the petition, and if he insisted upon representation, the court invariably assigned a corporation counsel. This assignment of corporation counsel represented the only variation of attorney type in PINS cases or possibility of comparing counsel. These proceedings thus might be characterized as an adversarial contest which pits the Legal Aid Society defense attorney against the complainant.

The criterion variables in Tables VII and VIII with one exception represent the same elements of court decision making described before.

TABLE VII

Outcomes of cases involving and not involving a state's attorney: For PINS cases in Brooklyn.

STAGE - Variable	CRITERION	C.C.	NO C.C.	N C.C.	N NO C.C.	P
		(percentages)				
Adjudicatory Adjournment	Less than two adjournments	20	15	44	81	0.4
Adjudicatory Detention	detained	7	2	44	81	0.25
Adjudicatory Disposition	not dismissed	37	33	44	79	0.6
Adjudicatory Dismissal	placement or behavioral arrangement agreed upon prior to dismissal	46	30	28	53	0.4
Dispositional Disposition (cumulative)	placement	9	4	44	81	0.2
Dispositional Disposition (incremental)	placement	25	12	16	26	

TABLE VIII

Outcomes of cases involving and not involving a state's attorney: For PINS cases in the Bronx

STAGE - Variable	CRITERION	C.C.	NO C.C.	N C.C.	N NO C.C.	P
		(percentages)				
Adjudicatory Adjournment	Less than 2 adjournments	26	20	15	105	0.5
Adjudicatory Detention	detained	7	12	15	105	0.3
Adjudicatory Disposition	not dismissed	29	19	14	100	0.4
Adjudicatory Dismissal	placement or behavioral arrangement agreed upon prior to dismissal	40	40	10	81	0.8
Dispositional Disposition (cumulative)	placement	13	7	14	101	0.5
Dispositional Disposition (incremental)	placement	50	37	4	19	

Only the adjudicatory dismissal variable was redefined for the purposes of measuring a strategic objective specific to the PINS hearing, since status offender proceedings are frequently dismissed because voluntary placement has been arranged, the family is working with an agency, or the respondent's behavior has improved.

The findings contained in Tables VII and VIII do not as strongly support the thesis that counsel has an effect upon PINS proceedings. The process and outcomes of cases which involved or excluded a state attorney do not show statistically significant differences. In Brooklyn, approximately one-third of the petitions presented by a prosecutor were dismissed, a figure similar to those hearings which did not involve a state's attorney. Much the same pattern is shown by the number of cases which involved two or fewer appearances. This relatively brief hearing occurred in 20% of the cases involving a corporation counsel and 15% of the cases that did not. Scores achieved by the prosecutors were substantially higher on the adjudicatory dismissal and placement variable. A prosecuted case was much more likely than a case which was not professionally contested to be dismissed because of an informal placement or behavioral improvement, a difference partly attributable to bargaining between corporation counsel and defense attorney. Finally, the cumulative incidence of placement was twice as high for those cases which involved a state's attorney.

The figures for the Bronx are based on a sample of only fifteen petitions, so their generalizability is limited. The data from them are weaker

but similar to the patterns shown for the Brooklyn data. Approximately one-quarter of the cases prosecuted by the corporation counsel were limited to less than two appearances, compared to one-fifth of the more informal or non-professionally prosecuted proceedings. However, an identical 40% of cases with or without counsel were dismissed because an informal placement was arranged or the respondent's behavior improved. The cumulative placement rate shows twice as many status offenders placed in hearings involving a corporation counsel (14%) than in those proceedings which are not officially prosecuted (7%). While these small differences are not statistically significant, this variation in the incidence of placement for cases involving and not involving a prosecutor may be important.

Despite the limited nature of the findings the data do indicate that some importance may be attributed to counsel, but the magnitude of the difference between the corporation counsel and non-professionals (e.g., the complainant) functioning as prosecutors on specific outcome measures is statistically insignificant. In general, however, the available data on PINS proceedings is not consistent with the findings which emerged in relation to delinquency hearings (Tables I - VI).

It is important to reiterate, however, that approximately the same proportion of PINS and delinquency cases are dismissed. Additionally the incidence of placement for status offenders and delinquents is not significantly different. Quite clearly, the effect of counsel on delinquency and PINS hearings may vary, but the ultimate outcome of such cases are similar.

Finally and perhaps most significantly, the total number of PINS placements dropped precipitately between the years 1970-75.

The data suggest that the outcomes associated with a PINS hearing are generally consistent with the defendants' interests. On the basis of this standard, counsel is just as effective in PINS hearings as in delinquency proceedings. This apparent success must be tempered by the realization that PINS pose a less serious threat to society but are just as likely to be placed as delinquents.

Comparison of Legal Aid Attorneys in PINS and Delinquency Proceedings

This section of the analysis presumes that the Legal Aid Society attorneys' ideological and professional commitment toward resisting any form of state intervention is just as strong in PINS as in delinquency proceedings, a presumption supported by the official manual of the Legal Aid Society. Because of this, and given the tactical advantage of the Legal Aid Society in PINS hearings, it is curious that a substantial number of youths charged with only minor offenses nevertheless are being placed.

Although the evidence is sketchy it can be speculated that this is due to an alteration in the stance of defense counsel in particular PINS cases. More specifically, it can be hypothesized that a substantial number of these youths accused of a status offense wish to admit to the charges and pursue various placement alternatives. This in turn tempers the defense counsel's capacity to function as an adversary. The defense attorney does

not resist intervention but rather contributes to and supports the exploration of residential placement. The data generally support the contention that the vast majority of status offenders channelled to residential facilities are placed with the consent of defense counsel, while nonresidential programming is rarely identified by these law guardians as an option. A plausible explanation for this uncharacteristic set of circumstances is that the defendant has requested placement.

The data in Table IX indicate that the Legal Aid Society attorneys' dispositional recommendations for PINS and delinquents are significantly different. In the Bronx, the defense attorney suggested residential placement 17% of the time for delinquents compared to two-thirds in PINS cases.

Table X indicates that while counsel is less likely to recommend placement for PINS youth in Brooklyn than in the Bronx, one-quarter of the attorneys in PINS cases compared to only 11% of those in delinquent's cases did so. Defense counsel thus was twice as likely to suggest residential placement in PINS proceedings than in delinquency hearings in Brooklyn and four times as likely in the Bronx.

This apparent consensus among court related actors concerning the desirability of placement for certain PINS is most significant. In the Bronx there is a perfect correlation between the dispositional preferences of probation and the Legal Aid Society. The strength of this relationship in Brooklyn is .9. The correlation between the court's disposition of a case and the Legal Aid Society attorneys' recommendations for or against

TABLE IX

The Legal Aid Society Attorneys' recommendation for and against placement by P.I.N.S. and delinquency petition in the Bronx

	RECOMMENDATION NOT TO PLACE	RECOMMENDATION TO PLACE	N	P
	(percentages)			
Delinquency cases	83	17	12	.02
P.I.N.S. cases	38	62	13	

TABLE X

The Legal Aid Society Attorneys' recommendation for and against placement by P.I.N.S. and delinquency petition in Brooklyn

	RECOMMENDATION NOT TO PLACE	RECOMMENDATION TO PLACE	N	P
	(percentages)			
Delinquency cases	89	11	9	.29
P.I.N.S. cases	76	24	25	

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placement in the Bronx is .87; in Brooklyn it is .831.

These strong relationships suggest that the Legal Aid Society attorney consistently agreed with the placement preferences of both the court and probation. Since residential placement represented the most restrictive dispositional alternative available to the court, the findings seem inconsistent with the law guardian's traditional predisposition toward minimizing state intervention. The reasons for this shift in perspective are not entirely clear, but do not seem, from other evidence previously discussed, to be due to the attorneys' capitulation to the power and values of the court. The court-related actor most capable of affecting such a change in the public defender's professional behavior is the defendant. The evidence suggests that the law guardian's responsibility to engage the state as an adversary was seen by them as less important than their responsibility to represent the expressed interests of the respondent for placement.

The available data support this thesis. However, this question must be more fully explored in future investigations. It presumes that placement is not a function of professionally determined need but rather the preferences of the PINS defendant. If this is the case, the court may be systematically ignoring the option of residential services for the substantial majority of PINS who are determined to resist placement.

Summary

It has been suggested that an emphasis upon children's rights initially contributed to the adversarial advantage of the law guardians. Their superiority

in adversarial contests was translated into a relatively high dismissal rate for delinquents and PINS. This situation, in turn, produced a public outcry for a more serious response to juvenile crime. Consequently, a well-funded unit of district attorneys exclusively responsible for prosecuting certain serious categories of delinquent acts was established, shifting the adversarial imbalance in a direction which favored the district attorney. The state's recent investment of resources in the prosecutorial function effectively insured an increased incidence of conviction and placement for youngsters accused of designated felonies. These shifts in effectiveness raise the question of whether or not justice can be served when resource advantages favor either the prosecutor or defense attorney.

SUMMARY AND DISCUSSION

SUMMARY

During the 1970's high levels of juvenile crime were a source of major public concern. The family court was a target of criticism because many serious delinquent acts were committed by youngsters known to the court. Some critics characterized the court as a revolving door. Dissatisfaction with the court led the legislature to enact bills calling for substantially harsher treatment of youngsters involved with serious crime. The study was initiated to address two basic questions:

- To what extent were problems being experienced by the court in the processing of cases?

- To what underlying forces might the court's problems be attributed?

The inquiry was addressed to the two largest courts in the city -- Brooklyn and Bronx. Both qualitative and quantitative methods were employed. Extensive, open-ended interviews were conducted with court personnel to obtain their views of court operations. In addition, the experiences of a large number of youngsters with the court were tracked systematically over an 18 month period. The tracking study included 500 youngsters brought to the family court for the first time on delinquency and status offense charges. Data were also collected on court experiences resulting from subsequent charges which occurred during the 18 month period. A second aspect of the tracking study involved designated felony cases drawn from the two courts. For both samples all pertinent cases were accepted until

the sample frames were filled. Tracking data were collected between 1977 and 1979. For those in the research samples data were collected on each court appearance. Charges, timing, outcome, patterns of legal representation, and reasons for court action were key variables on which data were systematically obtained.

The empirical data are best understood when considered in a historical context. The data were collected during a period of turmoil in the court. The juvenile court movement emerged in the United States at the turn of the century as a nonpunitive strategy for coping with troubled youth. Initially, preventive and nonresidential methods were preferred. Later intensive treatment in residential facilities became an important approach for the court. Eventually the extensive use of residential placement drew sharp criticism. Some youngsters were detained for very long periods of time although adjudicated on minor charges. Often there was no evidence that they had received effective treatment. A new model emerged which emphasized due process rights of the youngster rather than treatment needs.

The due process theme has emerged strongly in the Family Court in New York City. Through a series of legal precedents much has been done to define the rights of youngsters accused of juvenile offenses (see Appendix I). Further, the state provides funding to assure youngsters of strong representation through the Legal Aid Society.

Most recently still another theme has emerged. Alarmed by incidents of violent juvenile crime, the legislature has enacted bills calling for

firmer handling of youngsters accused of certain serious offenses. Aggressive prosecution on more serious charges has overshadowed some of the emphasis on due process rights.

Also pertinent is the fact that the study was conducted during a period in which the court like other public agencies was experiencing important fiscal constraints. The court was required to absorb staff cuts because of the city's financial problems. Further, other agencies in the juvenile justice network whose work supported that of the family court were also required to reduce services because of financial problems. Not only was the court under pressure because of public concern about perceived increases in youth misconduct, but the court was expected to respond at a time when it had to adjust to diminished resources.

The family court is rather accurately characterized as a poor people's court. Typically youngsters in the research sample came from low income families primarily dependent financially on some public income transfer program. Two thirds were living with a single parent. Ninety percent of the youngsters were either Black or Hispanic.

Although no standards are available regarding the speed with which cases should be processed, the tracking study provided some support for charges reported by the print media regarding delay in the processing of cases. In both courts 80% of the delinquency cases were adjourned at least once. Approximately half were adjourned at least twice. The time lapse between the beginning and end of the adjudicatory hearing was also important. For more than 80% of the delinquency cases, the adjudicatory hearing lasted

more than a month. In approximately half the cases more than three months were required. (These figures are deceptive, however, in that cases frequently were adjourned contemplating dismissal.)

Interpretation of outcomes of court hearings is hazardous because there is no independent basis for judging the merit of the charges. Further, the study provides no basis for estimating the extent to which dismissals result from such prosecutorial problems as the absence of key witnesses. Nevertheless, the data also provided some support to public concerns about the outcome of delinquency hearings. Overall slightly over 70% of the delinquency petitions were dismissed. Even in the relatively short (18 months) time frame of the data collection, recidivism was a serious issue. Over 25% of the hearings covered were concerned with repeat offenders. Dismissal rates remained substantial for those returning on second and third charges, but delinquency findings were somewhat more common among those returning to the court. Placement rates provided even more support for those critical of the court for failure to deal firmly with those accused of juvenile crime. Of those brought to the court on delinquency petitions only 4 and 9% were placed in institutions by the Brooklyn and Bronx courts respectively.

PINS hearings tended to be resolved more rapidly. Two thirds were resolved without an adjournment and within three months. More often than not PINS cases led to dismissals. In the Bronx and Brooklyn 61 and 79% respectively of the status offenses charges were dismissed.

Only about 10% of those who appeared initially on PINS charges were subsequently brought back on delinquency charges. Of those charged with PINS offenses, 9% were placed in institutions.

To the extent that the court is inefficient, one explanation lies within the organization of the court itself. Interviews with court personnel led to identification of a number of problem areas:

- Crowded waiting areas invite arguments between complainants and defendents.

- Movement of persons in and out of courtrooms during hearings detracts from the dignity of the proceedings.

- Because of scheduling practices, parties to cases frequently are required to wait many hours before their cases are called.

- Further, the informal methods used to establish the order of hearings adds to the frustration of those required to wait.

- The cooperation among judges, corporation counsel, law guardians, and probation officers needed for thorough and efficient handling of cases is often difficult to achieve. Inadequate interdepartmental communication is part of the configuration.

- Needed information from case records is often unavailable.

- Fragmented responsibilities of various court personnel leads to slippage and inconsistencies in the processing of cases.

- Staff cuts have negatively affected the performance of some units.

In coping with the serious structural problems in the court, line staff make extensive use of informal problem solving methods. The informal arrangements of line staff are critical in enabling the court to process cases as expeditiously as it does. Court personnel report high levels of work stress. The personal accommodations made by staff to an unsatisfactory work situation sometimes add to the operating problems of the court.

An imbalance in the relative power of public prosecutors and public defenders represents an important additional explanation of the operational difficulties experienced by the court. The degree of power of court personnel is important, in part, because of differences in perspective and responsibility. While law guardians seek to assist their clients in avoiding or minimizing delinquency findings, corporation counsel functions as a quasi-prosecutor presenting the state's case. While court personnel acknowledge the due process rights of youngsters charged with delinquency or status offenses, they do tend to differ on cases regarding the desirability of detention or placement. They also differ in the degree to which they believe that rehabilitation is likely to be effective in reducing future youth misconduct.

Some of the success of law guardians is attributed to the strong organizational support they enjoy. Most importantly the legal staff of the law guardians is approximately twice that of the corporation counsel. The staffing disadvantage affects the ability of corporation counsel to persuade witnesses to appear in court. The corporation counsel is handicapped further because the role is not precisely delineated in law. The

corporation counsel is not the official representative of either the state or the complainant.

Law guardians are active in seeking to affect not only adjudicatory hearing findings but placement decisions. Corporation counsel, in contrast, usually do not participate in dispositional hearings. Sometimes law guardians seek to discredit placements proposed by probation officers. Sometimes law guardians frustrate attempts to find placements by insisting on a set of placement criteria which cannot be met. Further, the threat that law guardians may appeal a highly restrictive placement tends to discourage judges from exercising the option.

The statements made by court personnel regarding the implications of the law guardian's advantageous position were treated as hypotheses to be tested through the tracking data. Three "outcome" variables were considered:

1) Adjudicatory detention (the temporary detention of defendants prior to the completion of the fact-finding hearing),

2) Adjudicatory disposition (the finding of the court on the charge)

3) Final disposition (the decision following a delinquency or status offense finding to place the defendant in a residential agency or permit the defendant to remain in the community.

In addition, the following process variables were considered:

1) Adjudicatory adjournment (rescheduling of the fact-finding hearing after the initial appearance of the principal parties).

2) Adjudicatory dismissal (a specific measure by counsel contributing to a dismissal).

In the Bronx the data indicate that law guardians were more effective than other public defenders in "handling delinquent cases." On a strategic level law guardians were more likely to obtain adjournments ($p < .001$). On an outcome level law guardians were more likely to avoid detention ($< .001$) and to obtain dismissals on delinquency charges ($p < .01$). Youngsters with other defense representation were less likely to be placed but the difference was not statistically significant. Brooklyn data for first delinquency charges are less decisive. Clearly law guardians were as effective as private attorneys. Law guardians tended to be more effective in achieving dismissals (apparently through their initiatives) but the difference was not statistically significant. Overall, dismissal rates were high across all attorney types. Contrary to the findings of previous studies, law guardians were at least as effective as private attorneys in obtaining dismissals for their clients.

Corporation counsel and district attorneys in the two courts were compared in their handling of cases of approximately the same level of severity. (By law it was required that district attorneys be assigned to prosecute designated felony cases.) The findings indicate that district attorneys were considerably more effective than corporation counsel on

outcome variables. In particular, the district attorneys achieve 30-55% higher percentages of delinquency findings. Placement also tended to occur more often in cases prosecuted by district attorneys, but the percentage differences were less dramatic.

Some PINS proceedings involved corporation counsel; others did not. (Complainants are generally expected to present cases; only when they request representation are corporation counsel assigned.) The data suggest that corporation counsel have a slight effect on PINS proceedings but the results are not statistically significant. To the extent that corporation counsel have an effect, it is generally supportive of the complainants objectives.

Because in the PINS cases studied Legal Aid attorneys were the only form of defense counsel used, there was no basis for comparing the relative efficacy of various forms of defense representation. It was possible, however, to compare recommendations of Legal Aid attorneys regarding placement in delinquency and status offense cases. Although the number of cases is small, the data indicate that legal aid lawyers are more likely to recommend placement in PINS than in delinquency cases. The finding is somewhat surprising since PINS cases tend to involve less serious offenses than delinquency cases. It is possible that when Legal Aid attorneys recommend placement in PINS proceedings, they do so because the youngsters they represent prefer to be placed. Decisions in PINS cases tended to be highly consistent with Legal Aid attorney recommendations.

DISCUSSION

Like other inquiries concerned with the family court, the current study identifies weaknesses in the operation of the court. A strong case can be made that resource deficiencies negatively affect the quality of the court's services in a variety of ways. The organizational problems of the court, however, appear to go beyond funding. Because a number of other inquiries have focused on needs for specific management reforms, it is not necessary to emphasize that domain here.

The current findings invite important questions regarding the court's due process emphasis. In delinquency cases the contest between lawyers representing prosecution and defense has assumed enormous importance. The data indicate that the way in which the legal forces are aligned has substantial implications for the outcome of cases. In "routine" delinquency cases legal aid lawyers in their role as public defenders are more heavily staffed and better organized than corporation counsel who play the role of public prosecutor. The result is very high rates of dismissals and low rates of institutional placement. In the more serious, designated felony cases, a much greater emphasis is placed on prosecution, resulting in much higher conviction rates. The court's vacillation in the relative emphasis it places on defense and prosecution suggests at a minimum that the court is highly uncertain about its own direction. It should be noted that shifting emphases on defense and prosecution cannot be attributed to the marketplace. Since the vast majority of youngsters charged by the court are represented by public defenders, it is the public which finances both defense and prosecution efforts.

A reasonable balance between defense and prosecution efforts is needed. Development of a standard of reasonableness in this arena deserves the attention of the full community concerned with juvenile justice. At issue is the allocation of public funds, the orchestration of legal efforts, due process rights of youngsters, and public safety.

As the court has become increasingly preoccupied with protection of the due-process rights of defendants, it has shifted away from a concern with the general welfare of troubled youth. Although sensitivity to the rights of youngsters is welcome, the older tradition's attention to the problems of juvenile delinquents and their families remains valid. There is reason to be skeptical about the current approach that is solely concerned with incarcerating the most serious offenders. There is some truth to the popular conception of the family court as a revolving door. For anyone but the most serious offender, the court offers little more than exposure to a process and a return to the streets. At the same time the current emphasis on institutional placement of serious offenders invites questions. Will the extensive use of institutionalization of serious offenders serve as an effective deterrent to the most unacceptable forms of youth misconduct? The research literature on effects of deterrence suggests that skepticism is in order.

The fact that the court tends to act firmly only on those charged with the most serious offenses raises larger questions regarding community control of youth misconduct. The court is one of the society's last lines of defense against unacceptable youth behavior. Youth conduct is most

immediately a concern of families, schools, churches, and neighborhoods. Conventionally it is at this level that misconduct is observed and corrective actions are taken. Typically informal control measures are emphasized. The police and the courts are a back up when other problem solving methods are inadequate. Both police and the courts typically seek tc resolve problems informally so that youngsters need not appear before the court. The availability of the court with its power to impose negative sanctions presumably serves as a deterrent. In theory various agents of the community can use the court as a threat in coping with deviant youth. The data indicate, however, that except for the most serious offenses the threat is empty.

The credibility of the court as a vehicle for sanctioning most youth misconduct has eroded at a time when other resources for controlling youth behavior have also diminished. Because of the city's fiscal problems public funds allocated for the community agents responsible for working with troubled youth are sharply reduced. Public schools no longer have assistant principals who can devote much of their time to discipline problems. The New York City Police Department's Youth Division has sufficient funds only for a very limited range of services. Public support is available only for scattered and incomplete delinquency prevention programs.

The situation invites questions about what is happening at a neighborhood level to control youth conduct. With the weakening of public social control measures, has youth conduct become more of an issue in neighborhoods? Alternately, have viable alternate measures been developed informally to control youth condu t? Have standards of acceptable behavior

been adjusted to reflect increasing incidence of conduct previously considered unacceptable? The current direction of the court, therefore, invites questions about youth conduct and social control measures at a neighborhood level.

It is evident that many of the youngsters passing through the court to the streets and residential facilities have serious personal problems. Deficits in skills pertinent to both school and employment, unacceptable social attitudes, and emotional disturbance are among the problems that may be evident. To what extent should the court attempt to address these problems?

In recent years the service emphasis in the court has receded. In part it has simply been displaced by the emphasis on due process. Further, service strategies if they are intensive are expensive. The efficacy of rehabilitative services for youthful offenders has also been questioned. The evidence generated through evaluation research indicates that some of the once promising service strategies have been oversold.

Nevertheless an argument can be made for renewed attention to services for troubled youth. Although services are expensive, the costs of non-intervention may be greater. It is plausible to believe that youth misconduct plays a role of some importance in the deterioration of neighborhoods. Youthful vandalism can hasten the deterioration and abandonment of marginal buildings. Youth crime can contribute to the fear which drives residents out of a neighborhood. The potential costs of services may be

modest when considered in light of the costs of neighborhood deterioration.

Policy makers and professional critics may have overreacted in drawing away from services. To the extent that service results to date have been disappointing, the following possibilities deserve consideration: 1) programs may have been evaluated on the basis of unrealistically ambitious objectives, 2) evaluation measures may not have been sufficiently sensitive to show genuine program contributions, 3) disappointing results may have been a reflection of implementation problems rather than a flaw in the service concept, and 4) more effective intervention strategies may yet be developed. Experience indicates the delinquency prevention and rehabilitation fields are properly seen as "difficult" or "challenging". The severity of the problems associated with troubled youth is such, however, that a vigorous search for effective intervention methods deserves to be continued.

Appendix I

NEW YORK CITY AND THE CUTTING EDGE OF JUVENILE JUSTICE REFORM: A SOCIO-LEGAL ANALYSIS

The single most important statement regarding the rights of juveniles was formulated at the conclusion of the supreme court's deliberations in the Gault case.[1] As was suggested earlier, this decision represented a significant reconsideration and partial redevelopment of the assumptions which had historically guided juvenile court decision-making. In general, it signified a curtailment of the court's capacity to intervene in behalf of the child and an emergent emphasis upon guaranteeing specific groups of juveniles a number of procedural safeguards.

This landmark decision, however, had a negligible effect upon decision-making in New York State's Family Courts. Approximately five years prior to the Gault decision, the New York State legislature enacted its Family Court Act.[2] This bill guaranteed the alleged delinquent each of the procedural safeguards which the supreme court later identified as fundamental elements of a juvenile hearing. A number of social commentators have suggested that the legislative article concerning the adjudication of delinquents applied due process principles as a standard for juvenile court decision-making. Kathy Katz has noted that the formal procedures outlined in the Family Court Act emphasized the judical rather than service functions of this court.[3] A brief listing of the more noteworthy provisions

of this bill would include: (1) limits on the duration of probation, detention, placement, and commitment. The Family Court Act also stipulated that the fact-finding and dispositional hearings be conducted as distinct judicial events. This element of the bill prohibits the judge from reviewing probation, social, or treatment reports during the fact-finding hearing. In effect, such information is considered inadmissable until it has been proven that the alleged offender committed the delinquent act.[4] Finally, other provisions of the bill required that grounds for a finding of delinquency be explicitly stated and a right to appeal established.

Perhaps the most historically significant aspects of the Family Court Act were the provisions for appointment of counsel and the formal separation of the fact-finding and dispositional hearings. These elements of the bill were cited as progressive and innovative by both the Supreme court and the President's Commission on Law Enforcement.[5] Just as importantly, the supreme court in rendering its opinion on Gault referred to the New York State Family Court Act as a model law.

New York State's role in the development of juvenile justice legislation and case law between the years 1961 and 1978 will be reviewed here. Legislative provisions and case law decisions which have served to increase the New York City Family Court's standing as a legal rather than a social institution will receive attention. Laws which have extended the rights of children who are accused of either delinquent or status offenses and are, therefore, in jeopardy of being incarcerated will be covered. Of concern is legislation intended either to establish a rough equivalent

between a child and adult's rights or to extend the due process privileges accorded a juvenile. New York State's pioneering tradition of establishing nationally significant legal precedents in the area of juvenile justice also will be highlighted.

Although this reform movement has been generally successful in establishing due process standards for juveniles, it has failed to secure a number of procedural safeguards for minors accused of misbehavior. The conspicuous absence of these rights can be attributed to the incremental nature or incompleteness of this effort. It is additionally a consequence of the complex set of issues which are associated with each of these legal matters. In any event, New York State's historic commitment toward addressing these matters and the outcomes associated with its efforts will be presented in detail.

Discussed here also will be the special qualities of those members of the Legal Aid Society's Juvenile Division in New York City who on a daily basis are responsible for defending youth accused of delinquent and status offenses. These lawyers function as defense counsel for a sizeable majority of the delinquency and PINS cases in New York City's Family Court. As such they are perhaps the single most important interpreters of both statutory and case law. Concomitantly, they are potentially capable of initiating substantial legal change through the appeals process. In effect the representatives of the Legal Aid Society can, depending upon their ideology, significantly contribute to both the development and implementation of the law. It is within this context that the ideology of the society as it is expressed through the individual courtroom attorney will be examined.

Statutory Law

The following analysis will identify a number of the major areas of legislative change in New York State. It does not purport to offer a complete picture of this transformation. Instead, it touches upon a variety of procedural issues which are necessarily central to such change. The statutory provisions which are pertinent to this analysis cluster about one or more of the following court or court-related events: (1) pre-adjudicatory, (2) adjudicatory, (3) dispositional, and (4) post-dispositional. Consequently, the legislative analysis was organized about these phases of decision-making.

Pre-Adjudicatory

The transition in New York State during the early 1960's from a children's to family court altered and expanded the traditional jurisdiction of this court. The new family court has intended to organize its activities about or have jurisdiction over a range of matters that had historically been divided between the civil and criminal courts. The primary

jurisdictional categories that were merged within this reconstructed legal institution included: adoption, matrimonial actions, paternity, support of dependents, child custody, minor crimes among family members and juvenile cases. The court was expected to integrate the variety of legal actions that were associated with family relationships and, thus, reduce the traditionally fragmented legal response to familial deterioration. These revised jurisdictional responsibilities were considered by many juvenile justice scholars as a significant and advanced feature of the New York State Family Court. It was within this context that Nanette Dembitz remarked:

> The crusade for family courts has resulted in over a dozen courts scattered throughout the country approximating the pattern of jurisdiction urged by family court proponents. New York comes close to the jurisdictional ideal in the number of different types of actions placed in the family court.[6]

One of the more important developments which evolved out of the juvenile courts jurisdictional authority and, thus, worthy of special mention was the definitional distinction that was established between delinquent and status offenders. Under the earlier Children Court Act judicial jurisdiction over the various kinds of behavior which were designated status offenses, i.e., juvenile misbehavior, habitual truancy and incorrigibility were subsumed under the categorical heading of juvenile delinquent. Subsequent to the court's reorganization, however, the term juvenile delinquent has become strongly associated with criminal behavior. In order to

reduce the potential stigma for a youngster of being processed by the court for a less serious status offense, a separate jurisdictional category of Person In Need of Supervision or PINS was established. As Douglas Besharov has commented, New York was one of the first states to create such a categorical distinction. He recently remarked that approximately twenty states have followed New York's lead.[7]

An element of New York State's jurisdictional code which has engendered much confusion and debate is the statutory provision which stipulates that a juvenile delinquent cannot exceed sixteen years of age. In a majority of states (33) the maximum age for jurisdiction is seventeen years.[8] It has, therefore, been suggested that New York State's relatively low upper age limit for juvenile jurisdiction is regressive in as much as it exposes youngsters who might otherwise be accused of delinquent offenses to the potentially more punitive and stigmatizing decision making process of criminal court. Alternatively, at least one respected commentator has indicated that a relationship may exist between the low upper age limit and New York's position as only one of a very small number of states which do not authorize the transfer or waiver of juvenile delinquents to criminal court.[9] Such a trade-off would tend to confuse both the implied meaning and impact of this combination of statutory provisions.

The detention of juveniles who are awaiting trial has been identified as "the most significant phase in the criminal justice process."[10] Martin Guggenheim has indicated that the problem is compounded when juveniles are

involved because of the greater likelihood that pre-trial detention will contribute to an adjudication of delinquent or PINS.[11] New York State has recognized the importance of this matter by instituting a particularly specific and restrictive combination of provisions concerning the use of pre-trial detention.

There has been a general unanimity of opinion among juvenile court advocates and critics that the potential period of detention should be stipulated and minimized. Despite this consensus, however, New York is only one of eleven states that have enacted provisions which limit the period of detention prior to an adjudicatory hearing.[12] The uniqueness of New York State's detention provisions is further illustrated by the limitations which have been placed on the judiciary's use of this temporary placement option. Levin and Sarri have indicated that New York requires an adjudication within three days of the date a youngster is detained.[13] Alternatively, North Carolina requires such a decision within five days, and Ohio has established ninety days as a maximum period of pre-adjudication detention.

An equally important matter is the development of provisions which require a detention hearing be held within a specified time period after the child has been taken into custody. New York is one of nineteen states which demands such judicial intervention. These states vary considerably, though on their maximum time allowance between a custody decision and detention hearing. New York and eight other states have determined that the hearing must be held within forty-eight hours of the date the child was

placed in a detention facility. The standards which have been applied in the remaining states are described below:

> ...North Dakota set the limit at 96 hours; three states have a seventy-two hour limit. Maryland and South Dakota only require that the hearing be held promptly, while Maine and Michigan require a hearing, but do not indicate a specified time period. In Indiana the child must request the hearing. Tennessee is unique in requiring a hearing within three days or a full adjudication within seven days or the juvenile is released.[14]

New York, however, does not number itself among the twenty states which statutorily permit a delinquent or guardian to post bail. A number of commentators have indicated that the absence of such a provision violates the spirit of the Gault decision.[15] Concomitantly, it denies the delinquent a fundamental procedural safeguard which is accorded adults through the Bill of Rights.

Paradoxically, a strain of the libertarian movement has determined that the juvenile should be denied a right to post bail. They suggest that the potential costs associated with this privilege are exorbitant. One of the spokesmen for this group, Martin Guggenheim, has considered this issue within the confines of the Joint Commission on Juvenile Justice Standards' effort to develop decision making criteria for the pre-trial detention of juveniles.[16] He indicates that the new standards are intended to minimize the possibility that those youngsters who are either able to remain at home or likely to be placed in a non-restrictive facility will be detained. Guggenheim concluded that the institution of a bail system would increase

the number of pre-trial detainees and consequently is "inconsistent with the Joint Commission's laudable premise and one to be avoided, if at all possible."[17]

Adjudicatory Hearing

This hearing is a counter part to the criminal court's trial. Most of the juvenile court practices which have been contested and debated by the legal community are specifically germane to this courtroom event. As such, it has functioned as a primary target for those members of the judiciary and state legislature that intend to overhaul the decision making structure of the juvenile court.

For instance, the supreme court's agenda as expressed through the Gault decision, addressed a range of issues all of which were highly intertwined with the character of the adjudicatory hearing. The distinctive facets of an adjudicatory hearing are manifold. This discussion, however, will be limited to those aspects of the hearing that are (1) central to decision making, and/or (2) pertinent to significant evidentiary and procedural dimensions of the hearing.

The New York State Family Court Act was one of the first pieces of legislation to require that the adjudicatory and dispositional hearings be formally separated by distinctive standards of decision making. It was on this basis that relatively strict evidentiary standards were promulgated. Their purpose was to regulate both the process and outcome of the proceeding.

The reconstruction of information according to established procedures was expected to assure the fairness of a hearing that would ultimately determine a youngster's innocence or guilt.

The evidentiary standards which have been established for the New York State Family Court are most specific. In general, only information which is competent material and relevant may be admitted as evidence. Consequently, a number of traditional practices of the family court have been outlawed. Hearsay evidence cannot be presented during the fact-finding hearing.[18] Concomitantly, expert testimony or social reports which have no direct bearing upon a case are inadmissable.[19] Finally, there is a requirement that the grounds for a finding of delinquency be identified.[20]

New York State statutorily enforced the supreme court's determination in Re Winship that any judicial conclusion concerning a respondent's guilt must be based on the strictest evidentiary standards or proof beyond a reasonable doubt. Similarly, as late as 1974 New York was but one of only fifteen states that had statutorily enacted elements of the Gault ruling other than the right to counsel. These provisions specifically include a (1) right to notice of the charges, (2) right to confront and cross-examine witnesses, (3) privilege against self-incrimination, (4) right to a transcript of the proceeding, and (5) right to appellate review.[21] New York's leadership position in this movement can also be traced to the unique position it shares with California, as the first state to statutorily guarantee the juvenile's right to counsel. Presently, thirty-nine states have extended this right to juveniles.[22]

In addition, New York has attempted to safeguard the juvenile's right to a speedy hearing. The Family Court Act states that "if the repondent is not detained an adjournment may be for a reasonable period of time, but the total number of adjourned days...on court motions...may not exceed two months."[23] The stipulations concerning detained juveniles are even stricter. The family court is statutorily required to initiate a hearing "not more than three days" after a petition is filed.[24] Additionally, an "adjournment on the court's motion may not be for more than ten days if the respondent is detained, in which case not more than a total of two such adjournments may be granted in the absence of special circumstances."[25] It has also been noted in the literature that New York State recently established a more general timetable for the completion of a fact-finding hearing. The new standards suggest that the elapsed time between the initiation and conclusion of the adjudicatory hearing should not exceed one hundred and eighty days.[26]

Another procedural abyss which has traditionally separated the juvenile and criminal courts, is the public's right through the media to attend a hearing or trial. The historic intent of increasing the accessability of a trial was to enable the public to monitor the judiciary's use and/or abuse of its authority. The founders of the juvenile court were persuaded, however, that general access to a hearing would not further, but rather damage the interests of the child. They considered public attendance a potentially destructive influence which would violate the court's paramount interest in protecting the anonymity of the child. It was predicted that

such license would, in turn, eliminate the court's capacity to shield the child from the public's retributive impulse. In the late seventies New York State attempted to incorporate the press or public's monitoring function as a dimension of the fact-finding hearing while minimizing the risk of disturbing the long or short term interests of the juvenile.[27] In effect, the press has been granted access to hearings subject to the approval of the presiding judge. The judiciary, however, can no longer devise or enforce policies which generally prohibit reporters from entering a courtroom. They must rather establish on a case to case basis the special circumstances which require that the courtroom be closed to the public. In return for this privilege, the legislature statutorily dictated that the names of the respondents and their families be withheld from the public.

The extent to which this delicate balance of interests can be achieved or sustained is presently unknown. This is a matter, however, that has significant implications and, therefore, should be of substantial interest to social and legal researchers. Hopefully, such data will enable the New York State legislature to better calculate the apparent as well as subtle trade-offs associated with their recently enacted policy.

Dispositional Hearing

This final stage of the family court hearing is intended to identify the treatment needs of the juvenile and devise appropriate interventive strategies. The specific procedural guidelines which govern the court's

decision making during the adjudicatory stage are not as sharply drawn for the dispositional hearing. It has been asserted that there is a "dearth of statutory material about the procedures that should be followed in dispositional decision making."[28]

This procedurally arid event has been paid greater attention by New York State legislators than their national counterparts. Consequently, dispositional decision making in New York's Family courts is more firmly rooted to a statutory code. The New York Family Court Act stipulates that only evidence which is material and relevant may be admitted during these deliberations.[29] The evidentiary standard of competence is not applicable to the dispositional hearing. Therefore, the distinct interventive proposals that have been developed by probation and other interested parties can be submitted to the court during this proceeding. It is on this basis that the juvenile's previous court record and emotional profile are first presented and later scrutinized by court officials. This background information functions as supportive evidence for the court's evolving treatment plan.

The juvenile also has a right to counsel during the dispositional proceeding.[30] New York was one of the earliest states to extend this right to the commencement of any hearing.[31] These provisions predated the provisions set forth in Gault that "the guiding hand of counsel must be made available to a child at every step in the proceeding against him."[32]

Jacob Isaacs and Nanette Dembitz have noted that in New York State

a finding at the conclusion of an adjudicatory hearing does not constitute sufficient grounds for sustaining a petition.[33] The court must, in addition, according to specific statutory provisions establish at the dispositional hearing that the respondent requires supervision, treatment, or confinement in the case of a juvenile delinquency proceeding or treatment and supervision if the petition alleges that the youngster committed a status offense.[34] If the court finds that intervention would serve no purpose, then a basis has been established for dismissing the petition.

A recently incorporated provision of the Family Court Act redefines the intent of the dispositional hearing. In the future, the judiciary will be expected to consider both the interests of the child and the community in the development of its dispositional plan. The increased emphasis upon protecting the interests of the community will almost certainly affect the court's calculations concerning the advisability of official intervention.

The legislature's historic interest in defining the bounds of judicial authority is also illustrated by a provision which requires the court to provide grounds for a finding of PINS or delinquency.[35] This legislation has recently been broadened. It presently requires that the judiciary's statement address both the grounds for a finding and the facts upon which it is based. Richard Gottfried and Simon Barsky have indicated that:

> The requirement that the order making the findings state the facts upon which it is based, is intended to go beyond the present requirement of stating grounds. While a complete recitation of the evidence is not called for the language requires more than conclusory statements.[36]

The statutory provisions which require both a determination prior to court intervention that the child is in need of supervision treatment or confinement and a statement concerning the grounds and facts upon which a finding is based, serve to limit the discretionary authority of the judiciary.[37] They, therefore, protect the child from arbitrary decision making. Although the judiciary is less restricted by procedural regulations during the course of a dispositional hearing, they are responsible at the conclusion of this event for establishing that their decision making conformed with certain statutory standards. Any failure on the part of the judiciary to satisfy these requirements constitutes sufficient grounds for an appeal. These provisions represent a rather novel attempt by the legislature to achieve a balance between the traditional diagnostic interests of the court during this proceeding and the need to protect the juvenile's fundamental right to a fair hearing and judgement.

Sentencing authority is a matter which has concerned a number of commissions that developed model codes for the juvenile court. Their policies on sentencing germinated from the principle of reducing the court's discretionary authority. The libertarian's intent was to limit the court's historic practice of meting out indeterminate sentences. Although the New York State code does not entirely conform to these standards, the sentencing provisions of the Family Court Act are among the most highly specific in the nation. New York is one of eleven states which has placed an upper limit on a juvenile's probationary period.[38] Another practice of juvenile courts is to commit youngsters to public and private facilities

for indeterminate periods. Juveniles are usually committed to public facilities until they have either reached the age of majority or twenty-one. Several recently enacted codes, however, placed a limit on the maximum period of institutionalization. New York is among eight states which have instituted such a policy.[39] In general, each of these states limit the period of commitment to two years with the provision that two-year extentions can be added to the initial sentence following a rehearing. The New York State code stipulates that a delinquent child's period of commitment may not exceed three years.[40] More importantly, however, the Family Court Act does not specifically authorize the judiciary to extend this initial period of commitment.[41]

Recent Revisions of the Family Court Act

A new theme has dominated the development of the most recent juvenile justice legislation in New York State. The public's recent preoccupation with violent delinquent crime has placed substantial pressure upon the State legislature to respond to this problem. It was on this basis that the statutory provisions which defined the central actors, locations, and rules of a juvenile delinquency hearing were revised in both 1976 and 1978. These amendments have affected the manner in which a hearing is conducted and concluded for an increasing proportion of youngsters accused of serious offenses. The next section of the analysis will briefly describe the substance and tone of this ground breaking legislation.

The portion of New York State's legislative code which identifies

behavioral or situational preconditions for placement has recently been revised. In the past, the placement decision maker's recommendations were shaped by guidelines that dictated a match be made between the child's best interests and available services. During the 1976 session of the state legislature, however, the statutory responsibilities of the family court were generally expanded to include the needs or protection of the community.

As has been indicated elsewhere, the traditional lexicon and aspirations of the juvenile court have been criticized by libertarians as being both vague and unsatisfactory. These reformers increasingly consider the "best interests philosophy" an unworkable pretext for decision making. Their desire to establish more specific procedural and sentencing guidelines merged during the mid-seventies with the public's concern about the increasing incidence of serious or violent juvenile crime. This fusion of circumstances sparked a legislative interest in reordering the general mandate of the family court. The movement has affected both procedural practices and sentencing policy for those relatively serious delinquent acts that have been officially classified as designated felonies.

The piece of legislation formulated in 1976 is entitled the Juvenile Justice Reform Act.[42] This bill created a new subcategory of delinquents who were identified as designated felons. The class of offenses referred to as designated felonies were acts committed by a person fourteen or fifteen years of age which if done by an adult would be classified under the criminal code as (1) murder first degree (1^{o}), (2) kidnapping 1^{o} or 2^{o},

(3) arson 1^{o} or 2^{o}, (4) assault 1^{o}, (5) manslaughter 1^{o}, (6) rape 1^{o}, (7) sodomy 1^{o}, and (8) robbery 1^{o}.[43] The legislature also indicated that violent crimes against the elderly represented a particularly serious category of crime.[44]

A provision of this legislation enabled the corporation counsel (who had performed the prosecutorial function in the New York City Family Courts) as well as the county and district attorneys of New York Counties to arrange for the temporary transfer of assistant district attorneys to present the petition in designated felony cases.[45] In New York City, a permanent arrangement has been established which enables assistant district attorneys to assume the prosecutorial function in designated felony cases. As Lisbeth Warren has noted, this provision is intended to enable the court to more efficiently handle the anticipated increase in the number of prosecutions. This increased volume of cases is a consequence of statutory provisions which preclude an adjustment of designated felony petitions at intake.[46]

In the past, the family court has relied upon the adjournment contemplating a dismissal as a procedural device to expedite the resolution of certain delinquency cases. Under this procedure, if the child is not referred to court within six months, the petition is dismissed. The Juvenile Justice Reform Act, however, specifically prohibits the family court from employing an adjournment contemplating a dismissal (A.C.D.) in those cases which involve juveniles accused of committing Designated Felony Acts (D.F.A.)[47] The Legislature, then, has effectively stated through provisions on intake and the ACD that all DFA petitions must be heard by the family court.

The most important dimension of this legislation are the provisions it established for the placement of convicted designated felons. During the dispositional hearing of Designated Felony Act cases, the court must determine whether the (1) needs and best interests of the youth, (2) background and record of the juvenile, (3) nature and circumstances of the offense, including whether any injuries were inflicted...and (4) need to protect the community require that the minor be placed in a restrictive facility.[48]

Quite clearly, the criteria for placement have been broadened to include a number of non-rehabilitative standards. Concomitantly, the court's central dispositional concern in designated felony cases involves the security features of the placement plan. These distinct elements of the Juvenile Justice Reform Act quite obviously represent a significant reconstruction of the family court's role in certain delinquency proceedings.

The court's function was further redefined during the final or placement stage of the dispositional hearing. Once it is determined that a youth requires restrictive placement, the court is legally compelled to enforce the sentencing formula devised by the legislature. This provision of the statute requires that:

> ...where the youth was found to have committed a Designated Class A Felony Act (murder 1°, murder 2°, arson 1°, kidnapping 1°) he or she is placed with the Division For Youth for an initial period of five years. The placement may be extended for one-year periods up to age 21. During the first year the respondent must be confined in a secure facility...

> under a restrictive placement where the youth was found to have committed any other Designated Felony Act he or she is placed with the division for an initial period of three years. For not less than six months, nor more than twelve months as determined by the court, the respondent must be confined in a secure facility.[49]

A new law was enacted September 1, 1978 which required that youngsters accused of committing specific delinquent acts be initially processed by the criminal court.[50] The preliminary draft of this legislation was targeted to include all those categories of offenses that were defined as designated felonies under the Juvenile Justice Reform Act. The new legislative definition of serious delinquent acts was more elastic than its predecessor's.Consequently, youngsters accused of robbery 2^{o}, assault 2^{o}, and burglary 1^{o} or 2^{o} with predicate offenses were covered by this legislative umbrella.[51] It was anticipated that this bill would quadruple the number of juveniles who were subject to procedural and sentencing provisions that increasingly emphasized the criminal dimensions of a delinquent act.[52]

This legislation also enabled the district attorney's office to recommend that certain actions be removed to the family court.[53] Those cases affected by this provision and involving designated felonies were subject to the statutory stipulations developed under the Juvenile Justice Reform Act.

The sentencing provisions that were created during this extraordinary session of the state legislature more closely paralleI the sanctions extablished by the criminal code. For instance, a youngster convicted

in the criminal court of committing murder in the second degree is subject to a term of life imprisonment. The bill also stipulates that for a class B felony, the term shall be fixed by the court and shall not exceed six years. Quite clearly the ceiling on the penalties available to the criminal court for juveniles convicted of committing class A, B, or C felonies has been raised considerably.[54] This new sentencing structure is also organized about the criminal code's central presumption that the penalties meted out by the court should be matched with the relative severity of the crimes committed.

The placement options traditionally available to the state for delinquents convicted of a relatively serious offense were also affected by this legislation. Such offenders are initially channelled to the Division For Youth. This agency has traditionally been assigned the responsibility of caring for and managing committed delinquents until they either reach the age of majority or are released by the state. The new bill, however, departs from placement precedent by stating that "The Division For Youth may transfer an offender not less than eighteen nor more than twenty-one years of age to the Department of Correctional Services."[55] The interorganizational relationship between the Division for Youth and the Correctional Authority is further cemented by another provision which indicates that "at age twenty-one all juvenile offenders shall be transferred to the custody of the Department of Correctional Services for confinement pursuant to the correctional law.[56]

As is apparent, New York State's recent Juvenile Justice Legislation places much emphasis upon the potential penalties associated with the commission of specific criminal acts. It effectively establishes a special class of delinquents that are to be processed and judged on the basis of a legal code which borrows much of its content from the criminal model. This legislation marks perhaps the most significant departure to date from the presumptions which guided the adjudicatory and dispositional decision making of the family court. Although this legislation does not reflect certain libertarians' predisposition to place all delinquents within the jurisdiciton of the criminal court, it does mark a significant first step in that direction.[57]

Other elements of this reform movement have criticized the legislation's "failure to either present any clear rationale for a separate system of juvenile justice...or concomitantly, fix the nature and duration of a sanction in the form of a standard disposition which is tied to the seriousness of an offense.[58] It would appear that such criticism is highly intertwined with the hybrid character of the bill. As has been noted, this legislation does contain provisions which on the basis of tone and specificity might be characterized as representing a more severe decision making framework. Certain commentators have insisted, however, that this new format has not served to limit the discretionary authority traditionally accorded juvenile justice decision makers. Rather, as in the case of sentencing the new provisions extend the judiciary's influence by increasing the maximum penalties it can impose upon an offender for specific

acts. Alternately, the courts' discretionary authority has been restricted by the legislature's insistence upon minimal sentencing standards for youngsters convicted of committing a class A, B, or C felony.

Although schisms exist within New York State's libertarian movement concerning the appropriateness or effectiveness of specific statutory provisions, the larger issues addressed by this recently enacted legislation have served to unify otherwise disparate elements of the state legislature. Both libertarian and conservative (or control oriented critics of the family court) have tended to agree that recent increases in the incidence of serious crimes committed by juvenile delinquents are serious matters. The leadership of these groups has also indicated that the state's response to this problem must include more restrictive and/or severe penalties. The development of fixed sentencing standards for youngsters convicted of committing serious delinquent acts is also central to the political agenda of each of these groups. Finally, the removal of the delinquency jurisdiction from the family court and its placement in the criminal court is an issue about which libertarian and conservative interests generally cohere.

The ideological overlap on these legal points and the consequent political alliances that have been formed is an unusual and important occurence. This phenomenon will be thoroughly examined at a later point in the analysis. It is presently important to reiterate that this most recent bill is not the definitive document in the movement to reform New York State's juvenile law. Instead, it is the latest and most advanced effort to graft elements

of the criminal code onto legislation which governs the judiciary's response to delinquent behavior. It is an important act, however, inasmuch as it signifies an end to the family court's jurisdiction over a subpopulation of delinquents. The ever-widening scope of this legislation perhaps foreshadows more sweeping changes that will ultimately affect all youngsters accused of delinquent acts. The potential magnitude and rationale for such shifts in policy are described by Frank McCarthy.

> The change in philosophy from the parens patriae approach to the criminal justice model raises a troubling question. If the juvenile court is now to operate on the same principles as an adult criminal court, is its separate existence desirable or even justifiable? Though different and perhaps less harsh sanctions may be appropriate for children, is it necessary to maintain an entire court system to reach this result? Similarly, could not other non-judicial advantages of the juvenile court system be made available to children prosecuted in adult criminal court?[59]

Case Law

Another element of the legal framework which regulates family court decision making is the appeals process. A higher court can as in the Gault proceeding use a specific case to comment upon an entire context for decision making. In general, however, the judiciary will limit its discussion to those facts which have a direct bearing upon the disposition of a case. If a higher court's opinion on a particular matter is both clear and consistent, then its decision can be used as a tool by defense counsel to affect the process and/or outcome of a subsequent hearing. Over time such

a precedent is likely to be woven into the tapestry of case decisions and statutory provisions that color the family court's approach to specific procedural and substantive matters.

The case-law precedents that have been established in New York State on matters related to juvenile justice have proliferated in recent years. This point is underscored by Elizabeth Dyson's suggestion that in 1959-60 only four out of 20,000 cases were appealed. She alternately notes, however, that in 1969-70 hundreds of cases were contested by defense counsel.[60] Perhaps more significantly, the appeals process has in the last fifteen years produced legal precedents that substantially affected juvenile justice decision making on both a state and national level. The increased role of defense counsel in New York State Family Court proceedings serves as a partial explanation of this phenomenon. A more precise description of the interaction between defense counsel and the development of case-law will be presented in this section. Of more immediate concern, however, is the general effect or function of case-law in refining the context for juvenile justice decision making.

The Gault decision has functioned as a relief map for the various actors that interact with the juvenile court inasmuch as it depicts the legal terrain that has to be assimalated and respected by the judiciary. The eventual impact of this supreme court opinion on juvenile proceedings will ultimately be shaped by the capacity of local actors to incorporate this judicial message into case-law precedent. Just as importantly, the lower

court appeals process provides an ideal arena for establishing explicit precedents on matters that the supreme court in re Gault either commented upon cryptically or ignored. A fuller description of the potentially clarifying effect of lower court case-law precedent is presented in the following passage.

> The effect of the injection of constitutional issues into the juvenile justice system can be measured by the impressive volume of litigation primarily in state courts revolving around the meaning of due process requirements. Since the supreme court can be expected to formulate only basic minimal procedural standards for the conduct of juvenile justice, it is appropriate to examine the lower court decisions because they show the actual impact of Gault on courts (juvenile) throughout the country on a day to day basis.[61]

As was the case in the previous section, a number of analytic subcategories will be used to focus and frame the discussion. This portion of the chapter will be organized about the following headings: (1) pre-adjudicatory, (2) adjudicatory, (3) dispositional, and (4) post-dispositional.

Pre-Adjudicatory

Kathy Katz has indicated that a number of the earliest rulings on the pre-adjudicatory rights of juveniles were rendered in lower New York State courts.[62] In re William L., a confession was obtained from a thirteen year old boy after hours of sleeplessness, and without either the presence of counsel or his mother. Although the police had read the Miranda warnings and the youngster confessed, the court ruled that the juvenile's waiver

of his rights was involuntary.[63] The judiciary, therefore, excluded the statement. This was one of the first cases to establish safeguards against unreasonable search and seizure which applied to juveniles.

Just as importantly, the lower court opinion in re S. was among the earliest to propose that Gault afforded juveniles all of the pre-custodial interrogation rights that the Miranda case had afforded adults.[64] A couple of more recent rulings have upheld the juvenile's right to Miranda warnings.[65] Another case decision applied a highly specific language standard to the pre-adjudicatory interrogation process.[66] In the matter of Rafael M., the Supreme Court of New York Appellate Division has held that a statement obtained by police from a juvenile was invalid. Their opinion indicated that the juvenile's confession had been obtained without translation of the Miranda warnings into Spanish for the benefit of the mother who did not understand English. The court, therefore, concluded that the youngster's statement should not have been received into evidence.

Other rulings have been concerned with developing procedural guidelines for preliminary detention hearings. These decisions specifically forbid the use of hearsay evidence at such a proceeding. The judiciary additionally commented that there is no justification for denying juveniles the same rights afforded adults at a preliminary detention hearing.[67]

Adjudicatory

In New York State, the most significant case-law precedents apply to this stage of the juvenile proceeding. A number of these rulings have played

an historically pivotal role in redefining the context for juvenile or family court decision making. These judicial opinions have, therefore, functioned as a lead force in the national effort to develop a set of procedural guidelines for the administration of juvenile justice.

There are two matters which are most central to the manner in which an adjudicatory hearing is conducted. These issues might be summarily described as (1) the standards which govern the sufficiency of a juvenile complaint or summons, and (2) the evidentiary principles which regulate the judiciary's final opinion. The criminal code represents perhaps the most rigorous set of conditions for determining the sufficiency of a petition. Presently, most juvenile courts throughout the country either on the basis of statutory or case-law enforce such a standard. John Speca and Frank White, in their recent survey of juvenile law, indicate that New York was among the first states to establish such a policy on the basis of case-law.[68]

The supreme court recently determined that the reasonable doubt standard applied to juveniles accused of delinquent acts. This case was originally contested in a number of New York State's lower courts. The Winship decision is generally recognized as one of the most important rulings rendered by the supreme court in the area of juvenile justice. The defendent was interested in determining whether proof beyond a reasonable doubt is an essential element of due process and fair treatment.[69] It specifically intended to establish that such a standard should be applied when a juvenile delinquent is charged with an act which would be considered a crime if it had been committed by an adult. The supreme court ruled that the pre-

ponderance of evidence standard, generally applied in civil proceedings, was insufficient. They noted that "the constitutional safeguard of proof beyond reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in Gault."[70] The supreme court justices' comments regarding this case concluded that where a twelve year old is charged with an act of stealing which renders him liable to confinement for as long for as long as six years, then, as a matter of due process...the case against him must be proved beyond a reasonable doubt.[71] This supreme court ruling which is inextricably tied to a New York State Family Court proceeding extended an additional due process right to the juvenile. This decision has been recognized and formally assimulated by a number of states. In a later New York State case, Wayburn vs. Schupl, a lower court enlarged the scope of the supreme court's Winship decision when it concluded that no distinction be made between adults and juveniles in matters pertaining to evidence.[72] The judiciary in New York State has also determined that the reasonable doubt standard should be applied retroactively.[73] This rippling affect underscores the importance of the Winship decision. Concomitantly, it has served to strengthen the belief that Winship and Gault are the two judicial rulings which have most affected the character and tone of juvenile court decisionmaking.

A number of other cases have been specifically intended to delineate the standards of proof necessary to adjudicate a youngster a PINS. In the matter of Price a family court held that in order to prove a child a PINS, conscious intent to be habitually disobedient and beyond the lawful control

of a parent must be established.[74] Similarly, a 1973 case in re Price indicated that an adjudication of PINS requires something more than a single isolated instance of misbehavior. The New York State Supreme Court broadened the defined intent of the Winship decision when it determined that an adjudication of a minor as a PINS must rest on proof beyond a reasonable doubt. This ruling broadened the supreme court's interest in exclusively applying this standard to juveniles accused of delinquent misbehavior.[75]

It has been statutorily established in New York State that the adjudicatory and dispositional hearings must conform to distinct sets of procedural standards. An especially important provision specifically forbids the admission of social or diagnostic reports during the adjudicatory hearing. Such information can only be presented during the dispositional hearing. This general statutory rule has been refined and specifically applied through case-law to a number of interrelated issues. For instance, the juvenile's right to protection against double jeopardy in New York State has been affirmed through a case which involved the use of probation records during an adjudicatory hearing.[76] The inadmissability of social reports during the fact finding hearing was also applied on the basis of case-law to youthful offender proceedings (minors between the age of 16 and 21 who are accused of committing a criminal act).[77] Prior to this decision only juvenile delinquency cases were subject to such regulation.

A matter which has served to divide judicial opinion in New York State

concerns the juvenile's right to bail. The state's appellate division determined in Wayburn vs. Schupl that New York's preventive detention provisions did not violate equal protection standards. This court concomitantly concluded that a juvenile did not have a constitutional right to bail.[78] Two more recent, but relatively local rulings sharply differ with the opinion of this higher court. A New York Family Court suggested that the appellate division's decision on this matter was neither persuasive nor binding. This court consequently held that it had the power to fix bail in juvenile delinquency proceedings.[79] The Orandango County Family Court's opinion in the matter of Wilson was restricted to youthful offenders. It employed a line of reasoning which implied that a youthful offender should be guaranteed the opportunity to post bail.[80] Although these opinions can only be applied to specific and independent subgroups of juveniles in different counties, they are nonetheless joined by the common purpose of incorporating bail privileges into the procedural framework of the family court Just as importantly, these rulings are part of a larger and more conflicted body of case-law that is concerned with devising appropriate standards for detention decision making.

The juvenile's right to counsel was both addressed and safeguarded by the supreme court through its opinion in the Gault case. The court's ruling, however, failed to define either a specific or consistent role for counsel. As Teitlebaum and Stapleton have suggested, the extent to which juvenile counsel's role has paralleled or departed from the adversarial practices employed in criminal court is in great part a consequence of local or state

rather than national decision making.[81] The appeals process was a device frequently used by New York State attorneys to further clarify the role of counsel.

The role of the defense counsel during a juvenile proceeding has been affected by a number of discrete variables which are central to the manner in which a hearing is conducted. Specific dimensions of counsel's right to cross-examine witnesses were established on the basis of two cases. In one instance, a court determined that it is an abuse of discretion to bar a juvenile's counsel from the cross-examination of witnesses.[82] Another ruling held that a trial court committed reversible error when it refused to comply with defense counsel's request for certain police documents during a juvenile proceeding. The court remarked that "it is hardly realistic to expect that defense counsel would retain sufficient memory of pertinent details to enable him to conduct a searching cross-examination."[83]

The judiciary has also established case-law precedents on matters which are salient to the waiver and competence of counsel. In the matter of George C., the Family Court of the City of New York withdrew a juvenile's admission because it was entered on the advice of an ineffective attorney. The court specifically held that the substitution of an attorney...who was not qualified by the Bar Association Family Court Committee in the area of juvenile delinquency (as was the original attorney) constitutes a denial of effective counsel.[84] A number of cases in New York State have also been concerned with identifying the special circumstances which might invalidate a

juvenile's decision to waive counsel. One ruling held that the effectiveness of a juvenile's waiver in the absence of parents must be judged by a number of factors, including age.[85] Another judgement has held invalid the waiver of rights made in the absence of parents or mature friends by an upset inexperienced sixteen year old boy.[86] A related issue which was particularly pertinent in the late 1960's concerned the retroactive application of the supreme court's opinion (as expressed through the Gault case) that the juvenile must be assured a right to counsel.[87] This matter was raised in MY vs. the people. The court concluded that counsel is so basic to the integrity of the fact-finding process that Gault should in general be applied retroactively.

Another matter which has tended to splinter judical opinion in New York State concerns the juvenile's right to a jury trial. The great majority of courts both in and outside of New York which considered this question, decided that neither Gault nor the later Duncan rulings provided a sufficient basis for impaneling a jury during a juvenile proceeding.[88] A number of local rulings, however, have affirmed the juvenile's right to this privilege. In 1970, the New York State Supreme Court determined that "a juvenile charged with an offense that would be a felony if committed by an adult, and/or subject to penalties which exceed a year of incarceration on the basis of the 6th and 14th amendments, is entitled to a jury trial.[89] The principles set forth in this opinion were affirmed in both the people vs. Marganbesser and in re Hogan."[90]

Each of these decisions, however, preceded the supreme court's determination that:

> The addition of a trial by jury might well destroy the traditional character of a juvenile proceeding. The procedural rights held applicable to the juvenile process will give the juvenile sufficient protection. The due process clause neither invites nor compels the introduction of a jury trial in juvenile proceedings.[91]

Although the supreme court's ruling in McKeiver vs. Pennsylvania has specifically commented upon the relevance and/or appropriateness of extending jury privileges to cases involving juveniles, it has not entirely quelled lower court interest in this question. In January of 1979, a New York Court held unconstitutional a state statute which denied a jury trial to a youthful offender who because of his record was eligible for a six-month period of incarceration.[92] Quite significantly, although this ruling addressed the judicial handling of youthful offenders and not juvenile delinquents, its line of reasoning was underpinned by the same principles of due process and equal protection which had provided a basis a decade earlier (in New York State) for insuring the juvenile delinquent's right to a jury trial. It is also important to note that despite the categorical differentiation between juvenile delinquents and juvenile offenders, this decision does apply to a subgroup of children.

The continued confusion in New York State regarding jury privileges is particularly relevant to those cases which involve designated felony charges. The Family Court of Onondaga County has held that a proceeding involving a designated felony under the state's Juvenile Justice Reform Act of 1976 is essentially a criminal proceeding which entitles the juvenile to a trial

by jury.[93] The right of this subpopulation of alleged delinquents to a jury trial is likely to be increasingly raised by defense counsel through the appeals process. As is apparent from the preceding discussion, the relevance of a jury trial to certain kinds of juvenile proceedings has not been resolved in New York State by the supreme court's ruling in McKeiver vs. Pennsylvania.

Dispositional Stage

A number of legal scholars have remarked that although the disposition is at the heart of the juvenile process, it has only been cursorily addressed through case-law.[94] As has been suggested, the judiciary concentrated its attention upon the adjudicatory hearing. This point is perhaps most strikingly illustrated through the supreme court's exclusive interest in the McKeiver, Gault and Winship cases with matters that were directly related to the conduct of the fact-finding proceeding.

New York has established a relatively impressive record in the development of dispositional case-law.[95] Its judiciary is responsible for a number of important case-law precedents that specifically pertain to the dispositional hearing. A constitutional privilege central to any judicial proceeding is the defendant's right to counsel. The question of the child's right to representation at a dispositional hearing has not been addressed by the supreme court. This matter, however, was raised in New York State through the appeals process as early as 1968 in re Robert F.[96] It was on the basis of this case that the juvenile's right to counsel at a disposi-

tional hearing was affirmed. An equally fundamental question was raised in re Cecilia R.[97] In this case, the New York Court of Appeals held that it is a violation of due process to convene a dispositional hearing for a child who has been found a PINS in the child's absence.

The lower courts in New York State have also considered a variety of cases which were specifically intended to restrict the judiciary's discretionary authority in detaining and placing. They have ruled that a disposition may be challenged if it is not tailored to meet the needs of the child, or if the terms of the order are manifestly disproportionate to the nature or seriousness of the crime.[98] Similary, the New York Supreme Court has ruled that placement of a child in a state training school should only be ordered when every other alternative has been exhausted.[99]

Family Court decision making during the dispositional hearing also has substantial implications for youngsters in jeopardy of being detained for an extended period of time. The New York southern district circuit court's opinion in Martarella vs. Kelley is a landmark ruling which has considerably affected the quality and kind of services provided in New York detention centers. The court held that those treatment standards which had been applied to training schools were also applicable to facilities that engaged in long-term detention. The judiciary also indicated that treatment was not restricted to therapeutic services, but also included medical, educational, and recreational services as well as the physical condition of the plant. A facet of this decision which is more directly pertinent to the interests of juvenile justice decision makers held that due process requires postadjudicatory detainees

be confined in a shelter care facility pending final placement, rather than a juvenile court detention center which does not provide adequate care or treatment.[100]

An impressive volume of litigation in New York State courts has focused on the post-dispositional rights of the committed juvenile. A number of cases have specifically contended that certain constitutional privileges must be provided to juveniles that have been confined by the state. An issue which has been of particular interest to the judiciary is the incarcerated child's right to be free from cruel and unusual punishment. This question was raised in the case of Louis vs. New York State Department of Social Services.[101] A petition was developed which challenged the placement of a fourteen year old PINS in solitary confinement. In its opinion, the court recognized the state's right under emergency conditions to temporarily isolate a juvenile inmate. The remainder of the court's opinion, however, assessed the constitutionality of isolation or extended isolation for civil inmates. This frame of reference contributed to the court's determination that "two weeks of confinement in isolation...with respect to juveniles was cruel and unusual punishment."

The ongoing significance of this decision, however, is frequently measured on the basis of the standards which evolved from the ruling.[102] A number of written regulations which concerned the rights of children in training schools were developed under the direction of Judge Lasker during the litigation of the Louis case. These regulations provided a particularly

detailed explanation of the proper uses of room confinement. It additionally forbade (1) the abuse of children; (2) deprivation of meals, mail, and family visits as a form of punishment; (3) institutional retribution for a child's failure or refusal to eat; and (4) control and discipline of children by other children.

Juveniles have also challenged the legality of their incarceration on the grounds that the statutes which provided a basis for an adjudication were either void for vagueness or discriminated unfairly against one sex. A New York statute which assigned females to the jurisdiction of the family court for a longer period of time than males has been held unconstitutional.[103] The void for vagueness doctrine has been tested in a number of cases. In Gesicki vs. Osward, a three judge Federal District Court held a statute proscribing depravity, a tendency toward depravity or waywardness unconstitutional on the grounds of vagueness.[104] This decision only commented upon the status of older juveniles who had been committed for noncriminal offenses. It should be noted that similar challenges of statutes which permit the confinement of younger juveniles for noncriminal behavior have been uniformly unsuccessful.[105]

Another area of postdispositional litigation is more directly concerned with regulating the juvenile's treatment experience. The right to treatment has functioned as a unifying theme for libertarians in the fields of juvenile justice, mental health, mental retardation, and corrections. The legal arguments which have provided the impetus for this movement are quite diffuse. In Alabama and Washington, D.C. judicial decrees have affirmed

mental patients' constitutional right to treatment.[106] A United States' District Court in Texas also held that juvenile delinquents are statutorily and constitutionally entitled to treatment services once they are committed.[107] Aside from these cases, there is little case law precedent which establishes an inmate's right to specific services on the basis of constitutional privilege. John Specca suggests, however, that these rulings provide little if any guidance about the constitutional theory which the decision makers relied upon other than a cursory reference to due process.[108] In effect, then, the constitutional basis for requiring that treatment services be provided to selected populations of incarcerated adults or children, is presently unclear. Despite this limitation, New York State's lower courts have been particularly active in establishing the bounds and conditions of this privilege. One judicial decision indicated that a training school's refusal or inability to abide by a court order to provide psychiatric care was sufficient grounds to terminate placement.[109] In another case, the court ordered the state's commissioner of mental health to provide specific and suitable facilities for the care of a mentally ill juvenile delinquent.[110] The court noted that the child has a fundamental right to such treatment. Finally, the United States' District Court for the Southern District of New York joined a growing list of federal courts when it determined that incarcerated juveniles have a due process right to rehabilitation.[111]

The preceding sections of the chapter were intended to establish how the essentials of due process and fair treatment have been defined and applied to specific subgroups of juveniles in New York State. The leadership role which New York State assumed in the development of a legal framework for juvenile or family court decision making was also described. New York

was assigned a special status in this emergent area of the law because its decision makers consistently supported litigation and legislation which have affected the fundamental character of juvenile justice. The subsequent discussion will consider the central role which the New York City Legal Aid Society has played in affecting the direction and interim outcomes associated with this transitional period.

The Role of the Lawyer

As has already been indicated, New York and California were the first states to statutorily require that juveniles accused of misconduct be represented by counsel. This statutory provision had an especially pronounced and immediate effect in New York City, Jacob Isaacs has noted that counsel rarely appeared before Domestic Relations Court in New York City or Children's Courts elsewhere in the state prior to the fall of 1962. This pattern of representation was dramatically revised, however, subsequent to the enactment of the Family Court Act. Data that were collected by the chief attorney of the law guardians suggests that between September 1962 (the date the Family Court Act became effective) and December 1962 approximately 3,000 minors were assigned counsel in the Family Court of the City of New York.[112]

The actual effect of the law guardian on the court's proceedings, however, cannot be calculated on the basis of the volume of cases which are assigned to defense counsel. It is rather a product of those forces which shape the attorney's professional role. This process of role definition is affected by the individual attorney's ideology as well as organizational interests. In

general, organizational determinants of professional behavior can be traced to the host institution's ideology and the group support available to the attorney outside the courtroom. The constituent support and resources provided by the larger social environment also serves to sharpen the professional's definition of self. Finally, it is important to note that each of these variables is interactive. This is perhaps most starkly illustrated by the effect of environmental forces or group interest upon individual ideology.

Many scholars have suggested that the courtroom attorney is an instrumental figure in the process of implementing juvenile justice legislation. In effect, he is responsible for delineating the intent, purpose, and boundaries of general laws.[113] Specific statutory codes shifted the burden of interpreting and applying the norms of juvenile justice from the judge (who in the past had faced the juvenile alone) to a forum which pits the defense counsel against the state. A fundamental question which must be addressed within this fluid context for decision making concerns the precise mix of interests which defense counsel should represent. This tension essentially involves a choice between the traditional adversarial role or the procedural model which regulates professional behavior in the criminal court and the historic treatment or rehabilitative concerns of the family court. The mix or purity of the attorney's perspective will in turn significantly affect the conduct and outcome of the family court hearing.

The juvenile justice literature is replete with references to juvenile or family courts that regulate much of counsel's courtroom behavior. The

attorney has been described as a professional captive of organizational forces that require certain accommodations. The most frequently cited determinant of this type of behavior is the attorney's frequent and extended interaction with a single judge. This set of circumstances has compelled defense counsel to relax certain procedural standards. This gesture is expected to contribute to the development of a durable working relationship with the family or juvenile court judge. The aforementioned structural forces effectively demanded that counsel's decision making be responsive to the rehabilitative and treatment interests of the court. It was anticipated that such accommodation would enable counsel to work more effectively in behalf of future clients. In effect, counsel's present interests were being mortgaged in the hope that this investment would pay long-term dividends.

This situation was described as being prevalent and characteristic of decision making in the vast majority of juvenile or family courts. Many commentators, therefore, dismissed the Gault ruling and those statutory provisions which required that minors be represented at a juvenile hearing as well intentioned, but ineffectual policies.[114] They concluded that although counsel generally appeared at juvenile hearings, they simply functioned as an appendage of the court and, therefore, did not further the legal interests of the child, or concomitantly contribute to the refinement of juvenile law. It was more specifically proposed that the central implementing role of counsel had been undermined. This set of circumstances, in turn, rendered impotent recent legislation and case-law that intended to restructure the

juvenile court.

Stapleton and Teitlebaum have recently suggested that another type of juvenile proceeding is being shaped in specific localities by more zealous and aggressive attorneys.[115] The defense counsel in these arenas has tended to be more firmly committed to the implementation of a full adversarial model during the adjudicatory hearing. The authors indicate that this approach has contributed to the development of more structured roles for professional participants. They suggest that the aggressive posture of the attorney has had a clarifying effect upon the form of the proceedings. In this instance, the defense counsel has used the immediate forum and the appeals process to establish both the parameters of the state's authority, and concomitantly the defendant's rights.

This definition of counsel's function closely parallels the role that has been structured for the attorney in the criminal court. The authors explain that a variety of factors provided the climate necessary to nurture this interventive posture. This combination of circumstances included: (1) the ideology of the attorney, (2) small group forces which tolerated and encouraged counsel's interest in defining the proceeding as an adversarial event, and (3) environmental support or an historic tradition that fostered pioneering efforts in the area of children's rights. This style of representation continues to be most unique. The presently exotic quality of such intervention, however, does not diminish its historic or contemporary importance.

The appropriate role of counsel in a juvenile proceeding continues to be a matter of great concern in most sectors of the country. This question, was addressed in New York City, approximately fifteen years ago. The Legal Aid Society's Juvenile Division which represents the vast majority of youngsters accused of misbehavior in New York City has articulated and acted upon its commitment to a particular mode of legal intervention. As early as 1969 it was suggested that the pioneering work in juvenile representation was being conducted in New York City.[116] This situation was attributed to the Legal Aid Society's permanent law guardian staff. It was proposed that these professionals had a chance to develop and refine their philosophical approach and technique. At the time, the staff consisted of twenty-two attorneys, one-fifth of whom were recent graduates of law school. A nucleus of four or five lawyers remained with the division and provided the continuity necessary "to train and indoctrinate the new attorneys."[117]

The position adopted by the law guardian staff has been to insist on all available rights and privileges, unless it seemed tactically unwise. In addition, they have remained completely independent of the court. Consequently, these attorneys had little, if any, reservation about contesting decisions of the family court that violated specific or general legal principles. This element of the law guardians' perspective might be specifically described as a predisposition toward appealing questionable judicial decision making. The innovative and substantial body of case-law precedent in New York State is in great part a product of the Juvenile Division's distinctive definition of the defense attorney's role. It was on this basis that the

Legal Aid attorney in the New York City Family Court was characterized as:

> Young energetic and aggressive in his/her work. As lawyers defending a client, they identify with the child and being trained in adversary proceedings, utilize legal techniques to the full.[118]

The environmental forces necessary to sustain this style of representation were also strengthened by certain historic traditions. It has already been noted that New York and California were the first states to statutorily require that juveniles accused of criminal misconduct be defended by counsel. The provisions were contained in the New York State Family Court Act which was enacted approximately six years before the supreme court's judgement in the Gault case.

Prior to the formal introduction of counsel into the proceedings of the family court a study was jointly conducted by the Committee on the Domestic Relations Court of the Association of the Bar and the Legal Aid Society.[119] This investigation was intended to determine the role an attorney might play during juvenile proceedings in New York City. Although their proposal concerning the role of counsel assigned some importance to the court's treatment interests and was not adversarial in tone, it remains one of the earliest policy statements which persuasively argued for an expanded and required role for the defense attorney during a juvenile hearing. This early source of support for counsel strengthened the Legal Aid Society's capacity to determine independently the function of its juvenile attorneys. Concomitantly, it suggested to the judiciary that prominent members of the legal profession

supported a more active role for counsel in juvenile proceedings and thus possibly softened their resistance to a new mode of decision making. Quite clearly, New York City was among the first locales in which each of the prerequisites necessary to implement this unique and significant style of representation was evident.

It is also apparent that the adversarial posture of the law guardians has been incorporated into the culture of the Legal Aid Society's Juvenile Division. The most visible expression of this phenomenon is developed in the Manual for New Attorneys of the New York Legal Aid Society's Family Court Branch.[120] This important socializing tool's description of counsel's general professional responsibilities is described below:

> For all practical purposes the fact finding hearing in a delinquency case is handled like the defense of an adult criminal prosecution.
>
> At the outset the attorney should be disabused of the notion that all juvenile delinquency proceedings involve "children crimes":, such as petty larceny and neighborhood fights. Attorneys in juvenile court are called upon to defend alleged murders, rapists, sodomists, robbers, drug pushers, synagogue and church desecrators, forgers, and extortionists.
>
> No matter how the attorney may personally feel about a particular child, the crime allegedly committed or the possible need for incarceration, his duty is to defend the child with zeal.

The point of view developed in the manual about the court's traditional treatment interests during the dispositional stage of the hearing is summarized in the following passage:

> The role of counsel at a dispositional hearing is simply to secure for the client the best possible disposition from the client's point of view... The lawyer's personal opinions regarding the needs of his client are irrelevant and frequently in conflict with the duty imposed upon the lawyer by the attorney-client relationship. While it is appropriate and helpful to counsel a client within the privacy of the lawyer's office regarding the client's needs and the disposition most likely to meet those needs (remembering, of course, that the attorney does not posess the expertise of a psychiatrist or trained social worker) the role of the attorney in court is that of an advocate and the disposition he or she advocates must within realistic and practical limits reflect the client's desires.[121]

The New York City Legal Aid attorney's capacity and willingness to implement a more adversarial and criminal model of decision making within certain juvenile proceedings is perhaps unparalleled. Their interventive style has been fortified by historical and organizational forces. This combination of circumstances has placed the New York City Family Court in a most unique position. Its courtroom practices offer perhaps the most advanced and concrete example of juvenile justice as defined by the libertarian.

Appendix II

Staffing of Corporation Counsel and Legal Aid Society in Brooklyn and Bronx Family Courts in 1975 and 1977

Year	Staffing	Corporation Counsel Brooklyn	Corporation Counsel Bronx	Legal Aid Society Brooklyn	Legal Aid Society Bronx
1975	attorneys	12	5	16	12
1977	attorneys	10	3	21	13
	supplemental District Attorneys	5	2	-	-
1975	support staff				
	clerical	1	-	5	4
	CETA worker	-	1	-	-
	investigators	-	-	2	2
	social workers	-	-	7	8
1977	clerical	4 + 1*	1*	7	4
	secretary	-	1	-	-
	paralegal	-	1	-	-
	detective	1*	-	-	-
	investigators	2*	1*	3	2
	social workers	-	-	10	6

* staff of District Attorneys

GLOSSARY

ADJOURNMENT CONTEMPLATING A DISMISSAL (A.C.D.) - A special type of adjournment which can only be requested by defense counsel. Approximately 95% of the A.C.D.'s granted by the court result in a dismissal of charges.

ADJUDICATION - A determination by the court as to whether the youngster is delinquent or a P.I.N.S.

ASSISTANT DISTRICT ATTORNEYS - Criminal lawyers whose sole Family Court responsibility is to prosecute designated felony cases.

CASE LAW - Judgments that are made by the judiciary about specific legal questions.

CORPORATION COUNSEL - Civil attorneys who prosecute approximately 95% of the delinquency petitions brought before the Family Court. They no longer prosecute a number of the most serious categories of delinquent crime which have been legislatively defined as designated felonies.

DESIGNATED FELONIES - Certain serious categories of delinquent crime. These categories of delinquency are prosecuted by Assistant District Attorneys and subject to especially severe penalties.

DISPOSITION - A sentencing judgment by the court subsequent to a finding of delinquency or P.I.N.S.

EIGHTEEN B PANEL ATTORNEY - Private lawyers who are paid and retained by the state on a per case basis to defend delinquent youth.

JUVENILE DIVISION OF THE LEGAL AID SOCIETY - A quasi-public organization funded in part by the Federal and State government. It is partially responsible for defending youngsters brought to the Family Court on delinquency or P.I.N.S. charges.

LAW GUARDIAN - A public defender employed by the juvenile division of the Legal Aid Society. These attorneys represent approximately 75% of the P.I.N.S. and delinquency petitions brought before the Family Court.

PRIVATE LAWYERS - Attorneys who are retained and paid by the defendant.

PUBLIC DEFENDER - Lawyer assigned by a court to represent a person charged with a criminal or juvenile offense. The Family Court uses both legal aid lawyers and 18B panel attorneys as public defenders.

STATUS OFFENDERS OR P.I.N.S. (PERSON IN NEED OF SUPERVISION) - Juveniles who are accused of ungovernability and/or incorrigibility. The offenses generally are associated with familial conflict. Offenses commonly included under this category include staying out late at night, not obeying parents, stealing from parents and attacking parents. Additionally youngsters that are truant from the school system are categorized as P.I.N.S.

STATUTORY LAW - Laws that are developed and enacted by the legislature.

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